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 OF FUNDS FOR LEARNING, LLC

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SUMMARY

The E-rate program plays a vital role in our nation. It has been a wonderful success and it is positioned to help impact education for years to come in every community across the United States.

We hope that the Commission decides to infuse much more, well-deserved, long overdue and badly needed funds into the E-rate program. Realistically, though, we know that more money <u>alone</u> will never solve what is currently ailing the E-rate program. There will <u>never</u> be enough E-rate funding available to satisfy what every school and library wants.

The E-rate community needs to recognize and accept that there is more amiss than the amount of funding in the program. <u>There is an allocation problem.</u> Today, the E-rate program operates like a blank check. There is no limit on how much funding an applicant may request and receive in any one funding year. As a result, a small number of applicants request a disproportionate share of available funds. Soon, a majority of E-rate applicants will be left empty-handed altogether.

If the FCC were to assess additional fees, increase the program by a whopping $2 billion per year, and suffer whatever political storms might come its way, who would benefit? The small percentage of schools who have, since year one of the program, qualified for internal connections support. A bigger E-rate fund should help all applicants, not just a few.

While the fund desperately needs more money, much of that new money will be wasted and a lot more of it will be ineffective unless and until the Commission: (1) retires the "blank check" application process; (2) puts reasonable limits on every applicant's E-rate discounts; and (3) restores local decision making by permitting every applicant to order off of the full menu of E-rate eligible services. Until this happens, the E-rate program is going to remain massively underfunded and perpetually in crisis — no matter how much money the Commission injects into it.

Under the Funds For Learning proposal, applicants will continue to request E-rate discounts just as they always have, but they will enjoy faster funding commitments, greater predictability, and -- for the first time for many applicants -- the option to set their own funding priorities.

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Part 1

I. INTRODUCTION

Hope.

We hope that the Commission decides to infuse much more, well-deserved, long overdue and badly needed funds into the E-rate program. That is why we prepared a petition to request more E-rate funding, collected over 1,700 signatures, and submitted it to former Chairman Genachowski.[1] Indeed, like most everyone else in the E-rate community, we hope that the Commission injects enough money into the E-rate Program to fund fully what every school in America needs in terms of bandwidth and infrastructure to connect their students to the Internet at the rate of at least 100Mbs/1000 students.

Reality.

Realistically, though, we know it is a fool's errand to stand on the sidelines simply hoping and advocating for something that may or may not come to pass. Today, the E-rate program needs money. Five years from now, the E-rate program will need more money. Ten years from now, the E-rate program will need *even more* money. It is unlikely that there will <u>ever</u> be an E-rate fund large enough to give every applicant all that they want. This is a fact. It is not a bad fact. It is a good fact.

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[1] http://www.FundsForLearning.com/docs/2012/11/IncreaseEratePetition.pdf

Schools and libraries need more connectivity now than they did 16 years ago. They will need even more of it in the future. At that time, they are likely to spend less money per unit but require higher quantities which will ultimately require them to spend more money tomorrow than they do today – a fact that brings us to the fundamental question: How should a finite amount of E-rate funding be allocated among a group of applicants as diverse as the entire population of K-12 schools and public libraries in the United States? Realistically, what the program requires, *no matter how much money the fund may have,* is some very basic structural fine-tuning. To make it sustainable and effective, the E-rate Program does not need a complete overhaul, but it is in desperate and immediate need of reform.

Today, the E-rate program operates like a blank check. There is no limit on how much funding any one applicant may request and receive in any one funding year. As a result, a small number of applicants request a disproportionate share of available funds, leaving others empty-handed. In FY2013, *5%* of school applicants represented *47%* of the demand for E-rate funding. Indeed, one school district requested 26% of the entire fund all by itself. Realistically, this must end. Rather than encouraging careful, thoughtful spending and decision making, the E-rate program's blank check architecture winds up accomplishing just the opposite. Realistically, if this problem is not addressed immediately, an increasing number of schools will soon be deprived entirely of support, which will undermine the integrity of the entire program.

Pragmatism.

Therefore, what the program desperately needs, and needs right now, is a hefty dose of pragmatism. The E-rate community and the Commission need to recognize and accept that there is more amiss than the amount of funding in the program. <u>There is an allocation problem.</u> Today, if the FCC were to assess additional fees, increase the program by a whopping $2 billion per year, and suffer whatever political storms might come its way, who would benefit? The small percentage of schools who have, since year

one of the program, qualified for internal connections support. This is not an effective means of building a broad base of support to increase the fund.

A bigger E-rate fund should help all applicants, not just a few. While the fund desperately needs more money, much of that new money will be wasted and a lot more of it will be ineffective unless and until the Commission: (1) retires the "blank check" application; (2) puts reasonable limits on every applicant's E-rate discounts; and (3) restores local decision making by permitting every applicant to order off of the full menu of E-rate eligible services. Until this happens, the E-rate program is going to remain massively underfunded and perpetually in crisis — no matter how much money the Commission injects into it.

WHO WE ARE

Funds For Learning, LLC (FFL) is a regulatory compliance firm that has been specializing in the E-rate program since 1997, shortly before the program launched. FFL has school and library clients and customers in all 50 states. Our school clients, located in both urban and rural areas, range in size from a few hundred students to hundreds of thousands of students. This breadth and diversity of our client base helps to deepen and expand what we know about how the program works and how it is working.

FFL developed and now operates E-rate Manager® online services, a suite of electronic tools that help schools to, among many other things, prepare, organize, submit, and archive their E-rate-related paperwork and to monitor the status of their funding commitments in real time. Service providers use other E-rate Manager® tools to access competitive bidding-related information and historic funding data that USAC makes available, because they find it is easier to use our tools than USAC's for that purpose. To keep the public informed, we update our website constantly with the latest E-rate-related news and information.

Since the program's earliest days, we have always done whatever we can to improve it. An FFL representative participated in the Commission's 2003 Public Forum on Improving Administration of the E-rate Program, and another FFL representative was an active member of USAC's 2003 Task Force on the Prevention of Waste, Fraud and Abuse. In 2011, we petitioned the Commission successfully to direct USAC to fund more requests for internal connections support, which, we are proud to say, resulted in the *Funds For Learning Order.* This past year, we provided the Commission with a wealth of E-rate funding data, tables, charts and analysis to help the agency in its ongoing review and analysis of the many difficult and complex issues that are facing the E-rate program today.

II. THE E-RATE PROGRAM NEEDS MORE FUNDING TO THRIVE

◆ BUT IT NEEDS STRUCTURAL CHANGE TO SURVIVE ◆

We believe strongly in the transformative power of technology. That is why we fully support President Obama's and Senator Rockefeller's goal of bringing the promise of next-generation broadband connectivity to more schools and libraries. However, in survey results that FFL released last year, only 10% of schools described their current communications networks as ready for the future.[2] Obviously, much work still needs to be done.

E-rate funds can and should be used to help our nation reach this important goal, but not before the E-rate program itself is strengthened. It does not need to be massively overhauled or transformed. The design of the discount program and the structure of the eligible services framework are both strong. All the E-rate program needs is some slight remodeling. After that, there is no question that it is going to need an infusion of funds, as the demand for funding is already more than twice what the Commission makes available every year. To thrive, the annual cap is clearly going to have to be at least double what it is today.

But thriving is one thing; surviving is something else altogether. Today, the E-rate program bears only a passing resemblance to the revolutionary and extraordinary program it once was. To keep that legacy alive, the E-rate program requires one, critical, structural change – "floors and ceilings." It needs funding ceilings to rein in the inevitable Big Spenders, who request far more than their fair share of E-rate dollars, and floors to guarantee that every applicant receives at least a reasonable amount of support.

It is also the time to restore the program's original no-priority system of funding, a system that placed every eligible service on an equal footing. The no-priority system, which presumed sufficient funds to go around, encouraged efficiency and more cost-

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[2] http://www.FundsForLearning.com/docs/2012/10/FY2012Survey.pdf

effective purchasing, because it enabled applicants to decide for themselves what their schools and libraries needed the most from the Eligible Services List, to apply for discounts on whatever they decided, and to count on receiving those funds.

The current, Priority One ("P1") and Priority Two ("P2") system makes that kind of predictability and reasoned, local decision making impossible. That is because in most years there is not enough money left over after every P1 request has received support to fund the vast majority of requests for P2 funding. This is forcing more and more applicants to forego or delay upgrading their P2 network infrastructure and maintenance. Instead they are spending increasingly more of the E-rate program's money and their own on generally more expensive P1 services, largely short-term solutions that make sense only because they can get E-rate support for them.

When it comes to connecting students and library patrons to the Internet at broadband speeds, who knows more about what exactly needs to be done, what feasibly can be done, and how much money is available in the school's or library's budget to do it -- the people at the local level who get paid to make those kinds of decisions or federal regulators? The answer, we submit, is obvious.

More money alone will never solve what is currently ailing the E-rate program. The truth is, and everyone knows it, that there will never be enough E-rate funding available to satisfy what every school and library wants. But if the Commission can (1) identify some reasonable sum of money and add it into the fund and (2) muster the will and strength to protect the allocation of E-rate funding by putting predictable limits on discount funding requests, applicants just might be surprised to find that they get what they need.

III. WHY THE E-RATE PROGRAM IS IN THE MIDST OF A FUNDING CRISIS

On its current course, and within a few short years, the E-rate program will have shifted from a universal service program, with a mandate to support access for all schools, to a narrow program, serving the needs of a select group of applicants with very high funding requests.

The demand for Internet access in classrooms is skyrocketing and it is not going to stop. Across the country, schools of all shapes and sizes are connecting their students to the Internet – and the gap between school expenses and available E-rate funding is accelerating. In FY2005, E-rate applicants reported telecommunications and Internet services totaling $2.1billion; by FY2013, that number had increased 67% to $3.5 billion.

Growth in School Internet and Telecommunications Services vs. E-rate Funding Cap[3]
2005 to 2013
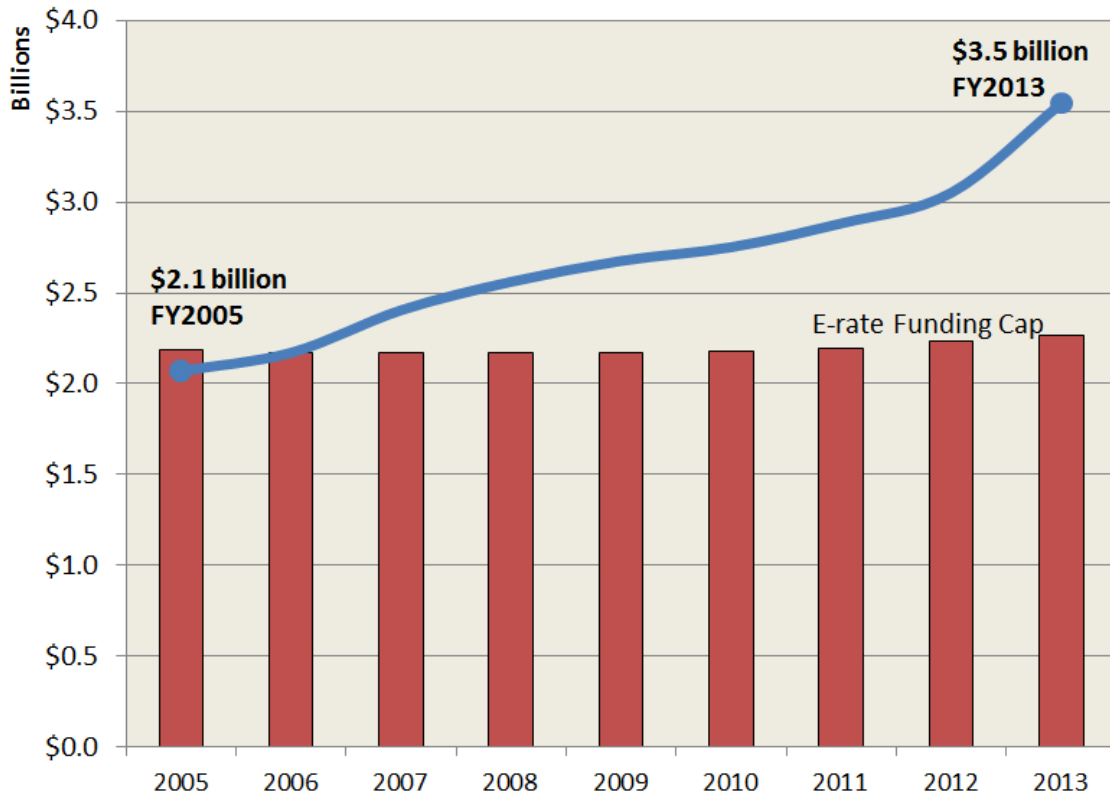
In FY2013, schools participating in the E-rate program reported telecomm and Internet expenses of $58.1 per student, far exceeding the $43.4 available per student.

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[3] The chart represents the total Internet and telecommunications services reported by school applicants, including the school's portion of the expense.

Per Student P1 Funding Request vs Available Per Student Funding[4]
FY2009 to FY2013
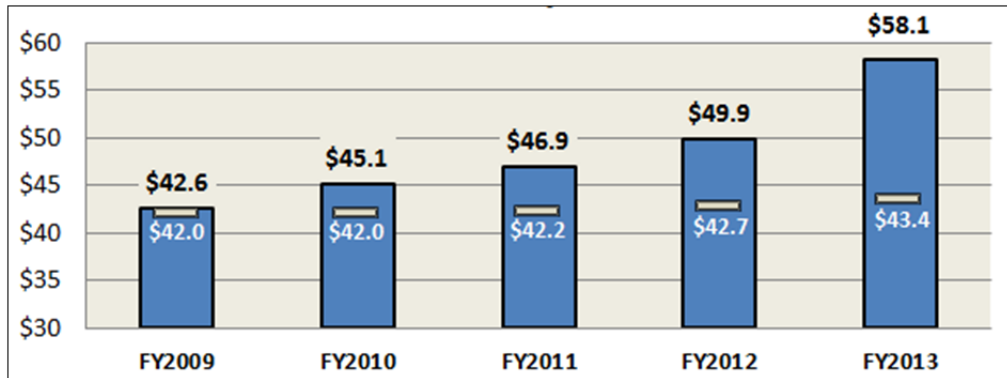
This shortfall is the result of three trends: (1) sky rocketing demand for Internet access, (2) technology preferences mandated by the FCC, and (3) a small percentage of applicants who request a disproportionate share of the fund.

Sky Rocketing Demand in Schools

First, there is a significant difference between the growth in demand and the growth in available funding. Since 1998, the E-rate funding cap has increased a meager 5%. Meanwhile the demand for E-rate discounts for telecommunications and Internet access has increased 321% -- a staggering 61 times more growth in demand than in the fund itself. As schools increasingly turn to online tools and resources, and as web-based services, including online testing, further take hold, the demand for Internet access and other communications will continue climbing.

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[4] Demand is based on the average per student P1 request for all school applicants. The available per student funding amount is based on the total funding cap, less library demand, divided by the total number of students in the United States as reported by NCES.

Growth in E-rate Funding Cap vs. Growth in Demand for P1 Discounts
FY1998 to FY2013
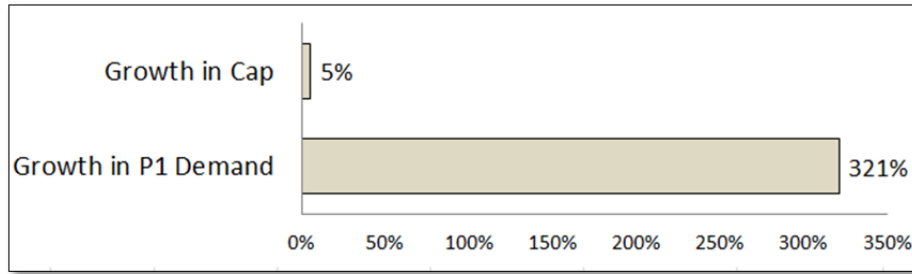
FCC Technology Mandates

The FCC's current priority system limits cost-effective solutions and drives up demand for P1 services. Applicants are denied the option to consider solutions which, in many cases, represent a more cost-effective approach to connecting students and library patrons.

Applicants and vendors are required to think in terms of P1 versus P2, distinctions that are increasingly meaningless and arbitrary in the face of today's evolving networks. This limits competition *between* technologies. For example, a school that is interested in deploying a Wi-Fi network has only one choice: seek bids for a monthly P1 service (which may or may not be cost effective). Purchasing or leasing a priority two Wi-Fi solution is, as a practical matter, off-limits for E-rate funds, no matter how affordable the solution may be.

Because of this, disruptive solutions -- those that may fundamentally alter the economics of connectivity -- may not see the light of day in schools and libraries. Meanwhile, the E-rate program as a whole benefits only from limited competition between like-minded vendors competing with similar solutions over razor thin margins.

The result of all this: everyone knows that there will be no P2 funds available for them. Fewer vendors and applicants are involved in P2 funding requests and applicants are requesting funding for P1 services as substitutes for more cost-effective P2 solutions.

Count of Participating Priority Two Applicants and Vendors
FY1998 to FY2013
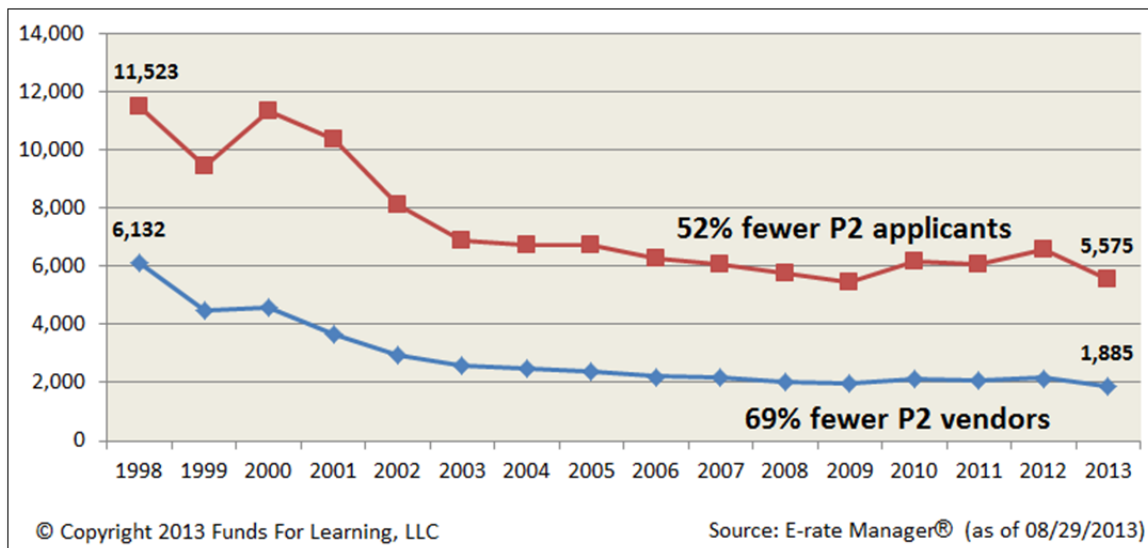
The FCC's narrow application of the eligible services list (ESL) also inflates demand for P1 services. The use of the ESL is restrictive, interpreted at a transaction-level and limited to specific pieces of the network rather than a comprehensive view of cost and eligibility. Ask a school district technology director if a network is cost-effective. They will tell you that they must consider the total cost of operating that network, not just the price of buying and maintaining a router[5]. But the current ESL explicitly denies funding for network management tools and network efficiency devices that might lower bandwidth requirements or increase network availability. The current NPRM even goes so far as to suggest that maintaining equipment is a poor use of E-rate funds because it does not fit neatly into the P1 or P2 categories.

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[5] The director will tally up the estimated total cost of operating that network over multiple years, including hardware expense, setup fees, monthly recurring costs, staff training and certifications, ease of upgrades and "future proofing", interchangeability of parts, the estimated cost to maintain a necessary inventory of spare equipment, and so on. In light of the mission critical nature of these communications networks, it is easy to understand why technology directors bristle at so many features of the FCC's ESL, such as the exclusion of spare equipment, the clear disdain of basic maintenance and the insistence of "or equivalent" in design specifications.

By mandating funding priorities, reducing technology choices and narrowing the eligible services list, the FCC is limiting options which may be cost-effective for applicants, thereby driving up demand for Priority One services.

Big Spenders

Although the growing demand for advanced telecommunications and Internet access should come as no surprise to anyone, there is a third, underlying trend that is more troublesome. More and more, a disproportionate amount of the demand for E-rate funding is being driven by a small percentage of schools. Referred to as "Big Spenders", this group submits applications in excess of $200 per student.

FY2013 E-rate Demand by School Applicants
Priority One and Priority Two

School Type	Total E-rate Demand	% of Cap	% of Demand	Applicant Count		Students (millions)	
Big Spender ($200 or more per student)	$2,086,801,512	88%	47%	1,174	5%	4.4	9%
Other school district (<$200 per student)	$1,755,693,411	74%	39%	8,851	41%	42.4	82%
Individual School	$427,957,900	18%	10%	9,099	43%	3.9	7%
Remote Rural School	$164,649,583	7%	4%	2,284	11%	1.2	2%
	$4,435,102,406			21,408		51.9	

Source: E-rate Manager® (as of 08/26/2013)

In FY2013, 5% of applicants were Big Spenders. As a group, Big Spenders asked for 88% of the funding cap, submitted 47% of the total demand, all while representing only 9% of the nation's students. Meanwhile, the vast majority of school district applicants are not Big Spenders. In fact, in FY2013, 95% of school districts requested less than $200 per student. The following chart illustrates the percentage of school district applicants based on their Per Student P1 funding request amounts.

Percentage of School District Applicants
By FY2013 P1 Per Student Funding Request Amount
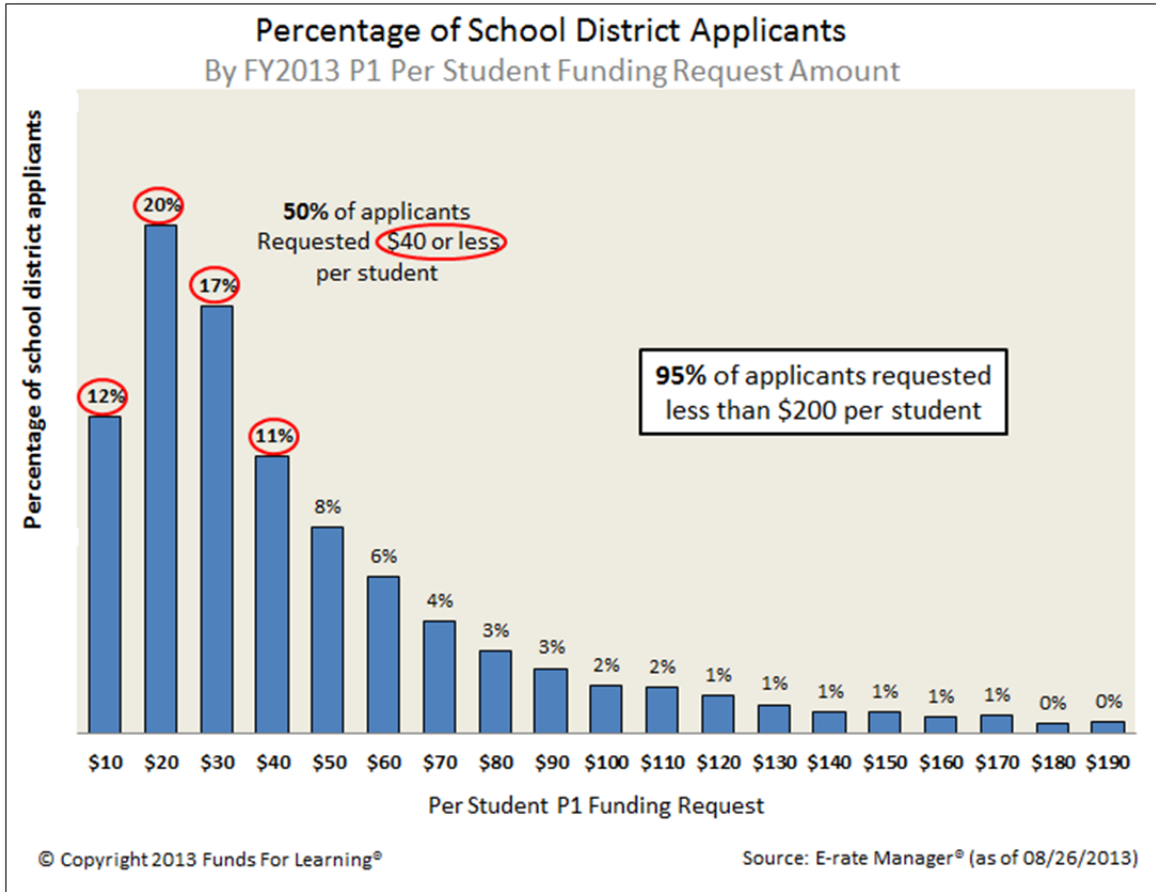
As shown in the chart, in FY2013:

- 12% of school district applicants submitted Priority One funding requests of $0 to $10 per student

- 20% of school district applicants submitted Priority One funding requests of $10 to $20 per student

- 50% of all school district applicants submitted Priority One funding requests of $40 or less per student

- 95% of school district applicants submitted Priority One funding requests less than $200 per student

It is important to note that the disparity between Big Spenders and other applicants is not a function of school district size or discount rate. There are "moderate requesters" along every step of the E-rate spectrum. Likewise, as illustrated below, there are Big Spenders in every discount range.

Average Per Student P1 Funding Request
FY2013 School District Applicants[1] by Discount Rate Range

Applicant Discount Rate (Range)	Most School Districts (95%)	Big Spender School Districts (Top 5%)
20% - 59%	$20	$264
60% - 79%	$36	$358
80% - 90%	$61	$500
OVERALL	**$40**	**$485**

[1] Excludes single schools and remote rural applicants

© Copyright 2013 Funds For Learning, LLC   Source: E-rate Manager® (as of 08/29/2013)

In FY2013, the average P1 funding request amount for schools who were not Big Spenders was $40 per student. For different discount ranges, this average varied by plus or minus $20 per student.

- Applicants with discounts of 20%-59% asked for an average of $20 per student in priority one discounts.

- Applicants with discounts of 80% to 90% asked for an average of $61 per student in priority one discounts.

By contrast, the small percentage of school districts who were Big Spenders requested twelve times more money per student, $485 per student versus $40 per student in others schools. For example, most 80%-90% discount rate applicants requested $61 per student for P1 services; however, their big spender counterparts requested $500 per student for P1 services.

It should be noted that there is nothing inherently wrong with a large funding request. In fact, some of the Big Spenders may be at the vanguard of educational

technology; however, the lop-sided distribution of demand for E-rate funds created by Big Spenders is placing a strain on the entire E-rate program. This strain threatens the program's long term stability and undermines its capacity to fulfill its mission.

IV. THERE WILL BE DIRE CONSEQUENCES IF THE COMMISSION DOES NOTHING EFFECTIVE TO CURB DEMAND

Getting a good monthly price on a high speed Internet line *is expensive* if that Internet line is not accessible to students and teachers. The most cost-effective fiber optic wide area network in the world will be a waste of money if that network stops at the front door of the school building and does not reach the students for whom it was intended.

Yet, this is precisely where the E-rate program stands today, encouraging applicants to get a good deal on a service that plugs into a network that is ill-equipped for the demands placed on it. The FCC's funding priority system routinely denies internal connections funding requests -- this, in spite of the fact that internal connections are vital for an effective network and that tight school budgets desperately need this type of support.

But this is not new. The majority of applicants have already learned not to count on the E-rate program for vital internal connections support. Beginning soon, most likely in FY2013, the small percentage of schools that have benefited from internal connections support will join the rest of the pack and be denied support as well.

As things stand, there is no longer support for internal connections. As of today, or very soon, **the E-rate program only supports leased connections across public roads and right-of-ways**, a severe departure from the program's original framework and intent.

If this were the end of the story, it would be sad, but at least there would be parity again with all applicants receiving some support for the services covered by the program (e.g. the "new" P1-only E-rate program.) Unfortunately, this is just the end of a sad chapter. The next chapter will be much worse.

P1 Funding Shortfall

Beginning in FY2012, the E-rate program cap could no longer meet the demand for P1 services. Given current trends, it appears quite likely that the demand for P1 services will exceed the E-rate funding cap by over $700 million in FY2014 and over $1 billion in FY2015.

P1 Funding Shortfall: Annual Funding Cap Minus P1 Demand (in millions)
Actual FY2010 to FY2013 and Forecasted FY2014 to FY2015
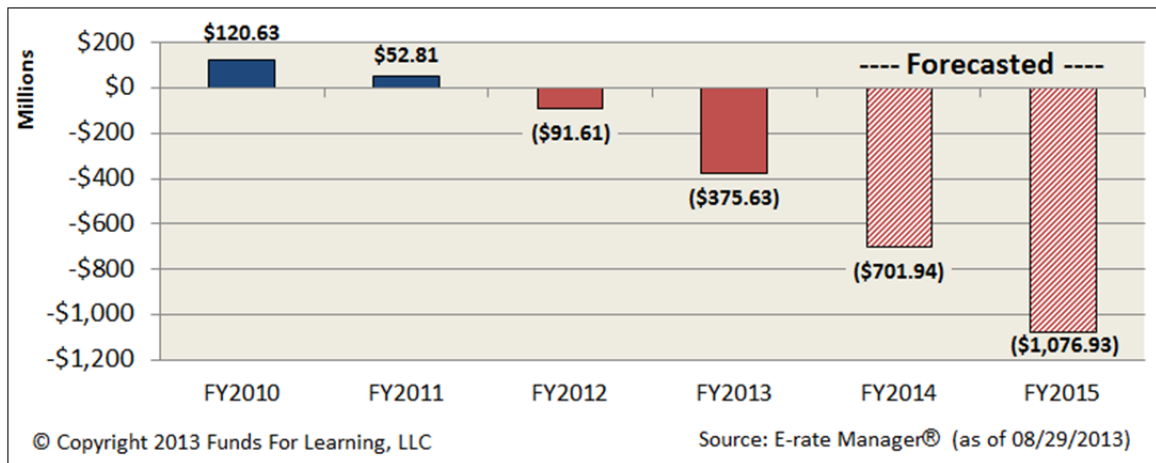
Rollover funds were used in FY2012 and FY2013 to cover this shortfall. But it is unlikely that rollover funds will be adequate to fill the gap in FY2014 and beyond. When this happens, the FCC will be faced with a dilemma. It could:

(A) Instruct USAC to complete all of the application review work, tally the eligible P1 demand, and then reduce all requests on a pro-rata basis.

(B) Use a discount threshold system similar to that used in previous years for internal connections funding requests.

A pro-rata reduction in P1 funding requests would severely delay funding commitments, create tremendous uncertainty for all parties, impede school budgeting, and retroactively reduce discount rates. For these reasons alone, it is unlikely that the FCC would pursue a pro-rata solution.

It is much more likely that the FCC will institute a P1 discount threshold system,

providing discounts to the neediest schools and turning away other schools entirely. Applicants are already familiar with this concept; USAC has extensive experience managing this type of review process; and, this approach would allow applications to be processed and funding commitments to be released much faster than a pro-rata system.

Assuming the FCC would adopt a P1 discount threshold system as the lesser of two evils -- and in all likelihood it would -- we will see the final chapter of the E-rate program written and it will look something like this:

- In FY2014, the P1 discount threshold would be as high as 75%.
    - 44% of libraries would be denied funding entirely.
    - 49% of all schools would be denied funding entirely, including 4,231 rural school districts, representing 5.4 million students at 14,097 school sites

- In FY2015, the P1 discount threshold would be as high as 80%.
    - 84% of libraries would be denied funding entirely.
    - 69% of all schools would be denied funding entirely, including 4,995 rural school districts, representing 6.7 million students at 17,993 school sites

- The extraneous funding decision delays that come along with a discount threshold system, similar to those that have plagued P2 applications, will begin to take hold.
    - Applicants will wait longer and longer to find out if their discount rate will qualify them for support.
    - Applicants will "break up" their P1 services into more site-specific requests, introducing additional administrative burdens for applicants, service providers, and USAC.
    - Delayed applications will increase the number of unused and underutilized P1 funding commitments, leading to more whipsaw discount threshold funding events, surges in applications by hopeful applicants, and ultimately a faltering in demand as applicants check out of the system as they have for P2 applications.

On its current course, at some point in the future, the discount threshold system will whittle its way down to a point where only the 90% discount school sites receive

funding support -- only 4 million students benefiting from a "universal service" program. If the E-rate program manages to stay around that long, it will remain in name only. It will be a shadow of the grandiose program originally envisioned by Congress and implemented under the watchful eye of the FCC. A program that served all American students will have fizzled. Rather than serving as a vibrant contributor to the communications needs of all schools (some more than others), the E-rate will have decayed into a niche program, contributing handsomely to a handful of applicants, but with no broad support and no real mandate.

The E-rate does not have to end this way.

V. FUNDS FOR LEARNING® E-RATE 2.0 PROPOSAL

The transformation of the groundbreaking E-rate program into an underfunded, Telecommunications-Internet Access-only support program serving a shrinking pool of applicants will soon be complete, unless corrective action is taken quickly. FFL's "Ceiling and Floor" budget proposal is designed to:

(1) Ensure that every school and library receives <u>a reasonable amount of funding every year</u>, no matter how large or small it is or where it is located;

(2) Enable applicants to <u>reasonably predict how much funding</u> they will be likely to receive from one funding year to the next;

(3) Give each applicant complete <u>discretion to spend</u> all or part of the funds in its annual E-rate budget on whatever it believes will best serve its local needs.

(4) Incent thoughtful, long-term planning and cost-effective decision making by, among other things, permitting applicants to <u>roll over unused funds from one year's budget</u> to the next for up to two funding years.

The E-rate 1.0 priority system of funding and the Internal Connections fiasco it fostered will become a thing of the past. It is important to note too that, because our solution is structural and scalable, any change the Commission makes to program rules that results in more funding becoming available will plug right into it, giving rise to increased

annual budgets across the board for every applicant.

A. INTERNAL CONNECTIONS ARE ESSENTIAL TO THE EFFECTIVE USE OF BROADBAND

We know that the Commission understands the full magnitude of the Internal Connections problem and why it is so important to provide schools and libraries with E--rate support for network infrastructure. In 2010, when this problem was less serious than it is today, this is some of what the Commission had to say about the subject:[6]

> <u>Internal connections, such as routers or hubs, are essential to the effective use of broadband within schools and libraries because they enable students and library patrons to utilize higher bandwidth applications in multiple locations within a school or library.</u> As schools and libraries are increasingly utilizing higher bandwidth services to meet educational and community needs, they need to upgrade and replace their existing internal connections as well in order to fully utilize the broadband services they are purchasing. Without upgraded Internet access and the internal connections necessary to bring the connection all the way to the classroom or library patron, many users simply will be unable to utilize the many applications available in today's marketplace, such as high-definition video streaming, that support online learning. Demand for priority one services has grown from $800 million in 1998 to approximately $2 billion in 2009. As noted above, only schools and libraries with the highest discount levels are receiving priority two subsidies, and the availability of priority two funding gets smaller as applicants apply for more funding for priority one services. <u>The net result is the E-rate program is funding high capacity pipes to a single point of entry at the school (or library) but not providing any support for the equipment that enables the computer terminals or laptops across the school or library to access that high capacity pipe.</u> Further, without changes to the way in which we allocate funding for internal connections, it is quite possible that in funding year 2011, E-rate support for telecommunications services and Internet access could eliminate the availability of any funding for internal connections. [Emphasis added]

B. A MORE PREDICTABLE FUNDING MECHANISM IS ESSENTIAL TOO

As evidenced by its comment below, the Commission obviously understands why it means so much to schools and libraries to be able to predict how much E-rate funding

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[6] *See In the Matter of Schools and Libraries Support Mechanism--A National Broadband Plan for Our Future, Notice of Proposed Rulemaking,* CC Docket No. 02-6 and GN Docket 09-51, para. 67 (2010) *("NBP NPRM").*

they can expect to receive from year to year and, *vice versa,* the value to USAC of knowing exactly how much each applicant has in its budget to spend:[7]

> . . . <u>many stakeholders have expressed a desire for a more predictable funding</u> mechanism whereby <u>schools and libraries would know on a yearly basis how much funding they will receive</u> for internal connections. <u>This predictability is essential so that schools and libraries can better plan for their future technological needs</u>. If, for instance, a certain amount of total funding would be designated for internal connections, <u>USAC would be able to issue funding commitment decision letters earlier</u> for priority two projects, enabling schools and libraries to begin projects more quickly. [Emphasis added].

C. FUNDING FOR INTERNAL CONNECTIONS AND MORE PREDICTABLE FUNDING WILL BE IMPOSSIBLE TO GUARANTEE UNLESS AND UNTIL EVERY APPLICANT RECEIVES AN ANNUAL E-RATE FUNDING BUDGET

The <u>ONLY</u> way to guarantee internal connections funding to every applicant and more predictable amounts of funding on a per-applicant basis is to once and for all shut down "blank check" applications and adopt, finally, what USAC's Task Force on the Prevention of Waste, Fraud and Abuse recommended <u>ten</u> years ago, namely, impose an annual ceiling on the amount of funding that an applicant may request. In other words, *every applicant should be required to operate within an annual funding budget*. On the subject of funding ceilings, the following is what the USAC Task Force recommended and why:[8]

> A ceiling would limit those applications that appear to be seeking disproportionately large funding requests. It is believed that this, along with other Task Force recommendations, would help ensure that applicants are submitting the most cost-effective funding requests....
>
> Applicants would be advised that both their Priority One and Priority Two funding requests are subject to a ceiling and would have to decide how to make best use of their available funding....

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[7] *NBP NPRM*, para. 70.

[8] Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse Convened by the Schools and Libraries Division, Universal Service Administrative Company, at 5 (Sept. 22, 2003) http://www.FundsForLearning.com/docs/2013/02/ErateTaskForceReport.pdf

...the Task Force explored a handful of possible formula models for establishing this kind of ceiling. These models included formulas based on the number of students and/or library patrons, based on the number of sites, and a formula that would take the applicant's discount rate into consideration. ...

...The Task Force acknowledges that any formula for setting a ceiling may ultimately curtail some funding requests. Nevertheless, it believes that as long as the E-rate funding pool is not large enough to meet the funding requests of all eligible applicants, the imposition of a properly constructed ceiling on funding requests would encourage applicants to create more cost-effective plans for ensuring access.

D. MORE SPECIFICALLY, THIS IS WHAT FFL IS PROPOSING

1. **Stop Allowing Applicants to Request and Receive Unlimited Amounts of E-rate Funding**. Establish an E-rate budget system that incorporates funding ceilings, funding floors, and higher funding floors for applicants in remote rural areas.

2. **Tie E-rate Budget Ceilings to Economic Need.** Create a graduated budget matrix that provides equitable, per student and per patron (or other variable) funding amounts for schools and libraries at different discount levels. In other words, 90%-discount applicants would receive the highest per capita budget amounts and 20%-discount applicants the lowest.

3. **Tie Annual Budget Ceilings to Geographic Location Too.** Include in the new budget matrix a "remote rural" column that doubles the funding floor for schools and libraries located in extremely high cost remote rural areas.

4. **Guarantee an Adequate, Minimum Funding Amount to Every Applicant**. Ensure that every applicant regardless of its size and location receives a meaningful, minimum amount of funding in its annual E-rate budget. Higher-discount-rate and remote-rural applicants would receive proportionally higher minimum amounts, respectively, than lower discount rate and urban applicants.

5. **Reward applicants for long-term planning and cost-effective decision-making** by permitting them to roll over unused funds from one year's budget to the next for up to two funding years.

6. **Do Not Alter the Current Discount Matrix.** There would be no need to reduce discount rates, because applicants would have to operate within their budgets**.** There could never be another funding shortfall, which means that USAC could stop investing time and resources in trying to determine where the discount threshold should fall. Furthermore, the need to stretch their E-rate budget as far as they will possibly go will incent applicants to make more cost effective purchasing decisions and drive down prices; this will make it unnecessary to reduce discount rates for this

same purpose.

7. **Add Services to the Eligible Services List; Do Not Eliminate Any.** To make annual funding shortages less severe, eliminating certain services from the ESL has been proposed. Since there can be no funding shortfall under an E-rate budget system, there would be no need to remove a service from the ESL for this reason. Indeed, because one applicant's use of funds to purchase X service could no longer affect whether any funds would remain for another applicant to use, the Commission could liberally add services to the ESL without having to worry about the impact of the addition on annual demand, which, under a budget system, is effectively set before the first application is filed for the funding year.

8. **Permit Applicants to Allocate Some or All of their Annual Budgets to Any Consortium Application in which They Wish to Participate (except for state networks); for State Network Consortium Applications, Set Aside a Specific Amount of Annual Funding.** An E-rate budget system creates, in effect, a zero-sum game. The E-rate funding "pie" is divided up among applicants. Each applicant's budget is a piece of the pie. If an applicant believes that it makes good economic sense to give a piece of its budget pie to a consortium to purchase something eligible on its behalf, that is exactly what the applicant would and should do.

9. **Reset Budget Amounts Annually**. Every year, well before the window application period opens, the Commission would set the per-student and per library patron (or other variable) budget amount for the next funding year.

10. **Make Funding Specific, Predictable, and Sufficient.** Assure applicants that their E-rate budgets will remain relatively constant from one year to the next, subject only to fluctuations in the size of the populations they serve and any additional E-rate funding that might become available.

11. **Permit Applicants to Set Their Own Priorities.** Permit applicants to allocate their annual E-rate budget entirely as they see fit among eligible services in any category and to any of the eligible buildings in their school districts and library systems -- regardless of what any particular site's discount rate may be – as was the Program's intent originally. Note: site specific services would continue to receive discounts at whatever the specific site's discount rate might be, 90%, 80%, 70% and so on. Thus money spent to buy eligible services for a 90% school will stretch an applicant's budget much farther than money spent to buy the same services for a 60% school. Note further: these are the kinds of decisions that should, and under this framework would be, made locally.

E. THE BENEFITS OF AN E-RATE "CEILING AND FLOOR" BUDGET SYSTEM

- Overall, increases accountability, flexibility, and predictability
- Encourages applicants to make the best use of their existing resources. If a school district already has a wide area network, it can choose to focus its E-rate discounts on wiring schools, or vice-versa
- Avoids "one size fits all" regulations by providing flexibility and more local decision-making
- Allows the Eligible Services List to be expanded without "breaking the bank." For example, bandwidth optimizers and network caching devices – devices that lower monthly recurring costs – could be added to the list of supported products
- Accommodates varying levels of funding. If the E-rate funding cap increases, all applicants benefit proportionate to their E-rate discount rate
- Builds on successful aspects of current E-rate Program
- Creates predictable and more reliable annual funding commitments
- Helps schools to better plan ahead and outline budgets to meet their technology needs
- Enables USAC to issue FCDLs more quickly
- Promotes efficient use and equitable distribution of E-rate funding
- Encourages technology planning and prioritization
- Enables applicants to set their own priorities
- Provides all applicants access to some support
- Maintains a sliding scale of support for all applicants, with the highest discounts and most support going to applicants with the highest documented need
- Encourages accurate funding requests
- Reduces waste and abuse
- Eliminates need for 2-in-5 rule
- Enables applicants to set their local priorities
- Reduces excessive and/or frivolous funding requests
- Reduces or removes incentives to replace equipment too soon or to gold plate networks
- Eliminates incentive to game the P1/P2 system
- Protects against "mega" funding requests
- Limits waste/fraud/abuse potential per entity
- Accommodates future increase(s) to fund without retooling the program
- Works with all other changes being discussed in the E-rate community

o   Reduces or eliminates the need for other programmatic changes

o   Could facilitate individual applicant "rollover" one year to next and/or multi-year funding

o   Allows for addition of new services to the eligible services list without "breaking the bank"

o   Maintain a sliding scale of support for all applicants, with the highest discounts and most support going to applicants with the highest documented need.

VI. CALCULATING BUDGET CEILINGS AND FLOORS

The FFL proposal places predictable caps on E-rate discounts for all applicants. The precise mechanics of the FFL proposal are attached as Exhibit A. In addition, specific revisions to the FCC's rules to implement the FFL proposal are being submitted by the E-rate Reform Coalition, a diverse group of applicants who have come together in support of the budget system.

A. A FRAMEWORK IS NECESSARY TO EVALUATE POTENTIAL SOLUTIONS

To measure the impact of a solution, it is necessary to establish benchmarks or milestones. From numerous meetings with E-rate stakeholders across country, FFL developed specific objectives and outcomes to evaluate potential solutions to the current E-rate funding crisis. Specifically, FFL considered ways to consider and assess various approaches to implementing the 2003 Task Force funding ceiling recommendation. There are multiple approaches that could be used to develop funding ceilings. Some are stronger than others. Even looking at one type of approach (such as the per student cap ultimately proposed by FFL), there can be multiple variations depending upon certain assumptions or starting points. Frankly, in a program as diverse as the E-rate fund, it is likely that there are several "good" options for creating funding ceilings.

We suggest that these factors be considered for any potential budget/cap system:

Meets applicants where they are. In many cases, applicants have entered into multiyear agreements for P1 services, anticipating a certain level of E-rate support. For

the vast majority of applicants, the budget system should produce results that, at a minimum, closely mirror their FY2013 demand for P1 services.

Remains technology neutral. One of the factors in the E-rate program's success has been its objectivity. Selection committees and "technology du jour" initiatives have never held the keys to the program. Despite applicants' occasional frustrations with PIA, the program remains fairly democratic and, for the most part, does not play favorites (outside of the P1 vs P2 distinction.) The budget system should maintain this technology and applicant-agnostic approval process.

Uses objective data. Budgets should be calculated using clearly articulated data based on objective standards with minimal assumptions and interpretations required. Whenever possible, calculation factors should derive from objective sources, such as the National Center for Education Statistics (NCES) or other reputable data repositories.

Provides a sliding scale of support. A strength of the original E-rate program design is its graduated discount tiers. Applicants who represent a higher percentage of impoverished families qualify for higher levels of support. The budget system should mimic this result and provide more dollars per capita to applicants who qualify for the highest discount rates.

Accommodate fluctuations. History has shown that the amount of E-rate funding available each year fluctuates. It varies based on inflation, roll-over and other factors. The current E-rate system accommodates this flux on an ad hoc basis via the discount threshold system. Ideally, a budget system should accommodate funding fluctuations in a manner that ensures extra dollars are put to work as quickly and effectively as possible.

Shares an increased cap proportionately. Aside from annual fluctuations, it is the nearly unanimous cry of the E-rate community that the annual funding cap be increased. Whether the cap is increased now, or sometime in the future, the change should (A) benefit all applicants and (B) benefit higher discount rate applicants the most. For example, if a billion dollars were added to the funding cap, every applicant should

have the opportunity to receive more discount support, but the vast majority of that support should flow to the 80% and 90% applicants.

Leverage everything possible from the existing system. Today, there are thousands and thousands of individuals who understand the 470/471/payment process, discount rate calculations, and eligible services framework. E-rate support flows to schools and libraries because of these hardworking individuals, many of whom are overworked and underpaid. It is incumbent upon the regulators of this program to minimize any additional burdens that this group may encounter due to changes in the E-rate program. There should be no more changes than are absolutely necessary to achieve policy goals.

Difficult to game or manipulate. The structure of the system should not easily tempt applicants and vendors to manipulate the rules. There should not be easy workarounds to subvert the spirit of the rules.

B. MECHANICS OF THE FFL PROPOSAL

Under the FFL proposal total funding requests for school districts and libraries would be capped each year. In evaluating mechanisms to calculate these caps, many different possibilities were considered, such as: per entity, per building or per student. Other possible limits included previous funding awards (e.g. the 2-in-5 rule), geography, and technology needs assessments. Few solutions offered objective, predictable results that were in line with most applicants' current P1 funding requests. The closest, by far was the per student approach. However, this too presented a major drawback: small schools were underrepresented. To balance the needs of small schools, budget floors were introduced. Floors provide applicants with the opportunity to request discounts up to a certain minimum amount. Finally, it is well documented that the per student telecommunications costs for remote rural schools is about twice that of other schools.[9] Therefore, the cap for these schools is doubled.

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[9] See http://www.fundsforlearning.com/blog/2013/07/ffl-submits-fy2013-p1-demand-analysis-to-the-fcc

For libraries, the per branch ceiling cap is based on the total number of public libraries in the United States.

Below are the formulas used under this system to calculate an individual applicant's budget cap.

For Most School Applicants

Maximum Discount Request $=$ (Per Student Limit $\times$ E-rate Discount $\times$ Student Count)

For Small Schools

Maximum Discount Request $=$ (Budget Floor $\times$ E-rate Discount)

For Rural Schools

Rural School Maximum $=$ (2.0 High Cost Multiplier $\times$ Maximum Discount Request)

For Each Library Branch

Maximum Discount Request $=$ (Budget Ceiling $\times$ E-rate Discount)

The budget factors used to calculate budget caps would be set each year by the FCC using the formulas in Exhibit A. The table below shows the estimated budget factors for three scenarios: (A) the FY2013 funding cap with no rollover, (B) the FY2013 funding cap and rollover, and (C) a $4.5 billion funding cap.

Estimated Budget Factors under the FFL Proposal
Based on various funding caps and rollover amounts

Factor	FY2013 Cap (no rollover)	FY2013 Cap (with rollover)	$4.5 billion (increased cap)
Per Student Factor	$56.27	$67.75	$104.50
School Budget Floor	$26,137.00	$31,422.00	$48,538.00
Library Branch Ceiling	$25,400.00	$30,536.00	$47,170.00

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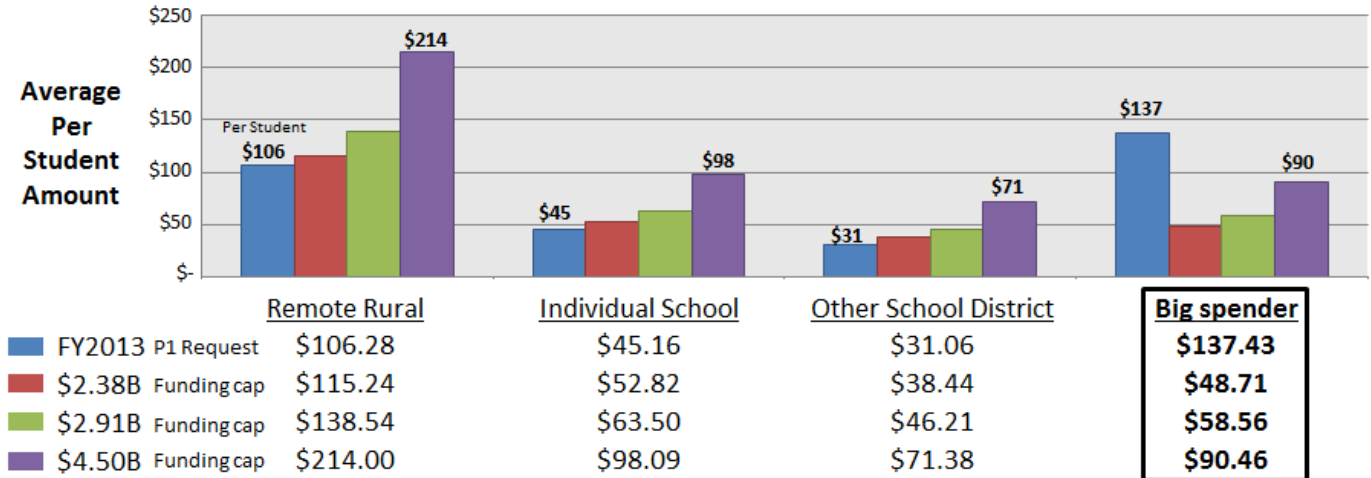For example, assume the FY2013 funding cap and rollover (represented by the middle column of the table.):

- If the FCC set the Per Student Budget Factor at $67.75, this would allow a school district with 4,000 students and a discount rate of 60% the opportunity to request as much as $162,600.00 in annual E-rate discounts [$67.75 x 4,000 students x 60% discount rate].

- Similarly, if the FCC were to set the Budget Floor at $31,422, this would allow a small remote rural school district with 11 students and a 90% discount rate to request as much as $56,559.60 in annual E-rate discounts [$31,422 x 90% discount rate x 2.0 high cost multiplier]. NOTE: in both cases, the school district would still be required to submit its E-rate applications and to pay its portion of each bill just as it currently does.

- Finally, for a library branch with a 90% discount, it could apply for $27,482.40. [$30,536 x 90% discount]

C. RESULTS OF THE FFL PROPOSAL

Excluding "big spenders" (which have used a disproportionate percentage of the E-rate program funds to date), the vast majority of schools would be able to apply for more than their FY2013 requests under the FFL proposal. See the chart on the following page which illustrates the estimated average per student funding commitment amounts for various funding cap/rollover levels, in comparison to actual FY2013 P1 demand.

Per Student Funding Request Amounts

Average FY2013 P1 Requested (Actual Per Student) vs FFL Proposal (Estimated Per Student)

Average Per Student Amount

	Remote Rural	Individual School	Other School District	Big spender
■ FY2013 P1 Request	$106.28	$45.16	$31.06	**$137.43**
■ $2.38B Funding cap	$115.24	$52.82	$38.44	**$48.71**
■ $2.91B Funding cap	$138.54	$63.50	$46.21	**$58.56**
■ $4.50B Funding cap	$214.00	$98.09	$71.38	**$90.46**

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Source: E-rate Manager® (as of 08/29/2013)

Remote rural includes all school district and single school applicants with an urban-centric locale code designation of "remote rural" regardless of the number of school sites or amount of funding requested per student

Individual school includes all single school site applicants, regardless of the amount of funding requested per student, that have an urban-centric locale code designation other than "remote rural"

Other School District includes all multi-school site applicants that requested less than $200 per student and have an urban-centric locale code designation other than "remote rural"

Big spender includes all multi-school site applicants that requested $200 or more per student and have an urban-centric locale code designation other than "remote rural"

Part 2

COMMENTS ON OTHER ISSUES RAISED IN THE NPRM

VII.   NEITHER TELEPHONE NOR ANY OTHER SERVICE SHOULD BE REMOVED FROM THE ELIGIBLE SERVICES LIST

Removing eligible services is not the answer to the E-rate funding crisis. The E--rate dollars associated with most of the services under discussion for removal are minimal, and, despite what some might think, the data shows that eliminating discounts on telephone service will not come close to solving the problem.

Moreover, removing telephone service from the ESL will adversely affect small schools in poor communities the most, and it is likely to diminish teacher effectiveness and decrease classroom safety and security. In addition, it could create economic incentives that force applicants to invest in one technology over another, regardless of whether the investment makes the most sense in terms of local needs and finances.

The original eligible services framework remains the correct framework for the E-rate program. *Instead of removing services from the ESL, the Commission should be adding more.* Increasing local technology options for applicants increases the likelihood that an applicant can choose a solution that best suits their specific need. If the Commission adopts annual, per-applicant funding budgets, this would enable the Commission to keep the original eligible services framework intact, and add more services to the ESL without having to worry about how the new services will affect the overall demand for E-rate funding.

A. Removing Services from the ESL will Have Unintended Consequences

Annual funding for a service like paging, which the Commission is considering eliminating from the Eligible Services List ("ESL"), represents an infinitesimally small amount of the program's annual, total requests for funding.[10] Email and web-hosting,

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[10] In FY 2013, applicants requested $108,813 from vendors registered with the FCC as paging service providers. The Service Provider Identification Numbers associated with these vendors are 143002766, 143003037, 143003042, 143003058, 143003062, 143003063, 143003097, 143003100, 143003139, 143003160, 143003172, 143016140, 143017083, 143019484, 143023352, 143024056, 143024351, 143029630, 143029854, 143031531, and 143035802.

another service potentially on the chopping block, represents a slightly higher amount[11], but it is still, relatively speaking, incredibly small.   Therefore, if the Commission's rationale for taking services like these off of the ESL is to stretch E-rate funding farther every year, this is not going to be an effective way to accomplish that objective.

Eliminating telephone service from the ESL is another option that some in the E-rate community have suggested might help to reduce the increasingly large gap between the annual demand for funding and the funding cap.   No question, annual requests for discounts on telephone service are fairly substantial. The problem with eliminating support for telephone service, however, is that it would disproportionately impact the smallest schools and libraries in our nation's poorest communities. Indeed, telephone service is where many small schools and libraries spend most of their E-rate funding every year, and since they are already operating on shoestring budgets, cutting off E-rate support to them for telephone service would hurt them the most.

There were 9,099 individual schools that applied for E-rate finding in FY2013[12]. Because these are single school sites, and presumably have no need for a Wide Area Network, their P1 demand provides an important glimpse into the relative impact of removing P1 services from the ESL. More importantly, their data provides a much needed counterbalance to the voices who cavalierly call for the removal of phone service.

- As a group, individual schools represent nearly half of all E-rate applicants. In FY2013, they requested $176.99 million in P1 discounts.

- These schools request, on average, $1,621 per month in E-rate discounts: $648 telecommunications, $591 Internet access, $361 cellular service, and $21 in email/web-hosting.

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[11] In FY 2013, applicants requested $40,731,406 in funding for email and web-hosting services. The Service Provider Identification Numbers associated with these vendors are 143005118, 143009312, 143020189, 143022787, 143024051, 143026054, 143026430, 143027282, 143027372, 143027394, 143027425, 143027426, 143027682, 143027725, 143027799, 143028023, 143028153, 143029766, 143030052, 143030117, 143032860, 143033649, 143035772.
[12] For consistency Excluding remote rural individual schools.

Average Per Student P1 Funding Request
FY2013 Single School Site Applicants* by Discount Rate Range

Service Type	Total Requested	Average Requested (Annual)	Average Requested (Monthly)
Telecomm Service (non-cellular)	$70,718,535	$7,772	$648
Internet access	$64,573,691	$7,097	$591
Cellular	$39,404,100	$4,331	$361
Email/web-hosting	$2,291,142	$252	$21
Total	$176,987,468	$19,451	$1,621

*Excludes remote rural applicants

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Eliminating voice, cellular and web-hosting support from the ESL in FY2013 would have reduced this group's requests by $1,030 per month, effectively stripping about half of all E-rate applicants of the majority of their E-rate funding. The total "found" money for the E-rate fund: $112.4 million, enough to cover about 5% of the FY2013 P2 demand at the 90% discount level.

$1,030 per month may not seem like much money in the realm of billion dollar funding caps, but to those individual schools, it is a *significant* amount of money. Punishing small schools because there is not enough funding to go around, or because they simply do not have time to submit comments in this proceeding, does not, to us, make any sense. What does make sense is to allow them and every other applicant to decide for themselves on what eligible services it makes the most sense to spend their E--rate dollars.

Something important that frequently gets lost in the debate over this issue is that schools and school districts of every size have made excellent use of their E-rate discounts to extend telephone service into their classrooms. In 1998, very few classrooms had telephone service, so if a teacher needed to call a parent or tech support or was faced with an emergency, he or she had to find a telephone somewhere else in the

building or ask a student to run for help. Every professional in every office in America has telephone service. Teachers should have it too. These hard-working professionals rely on this service to communicate with parents, other teachers, support staff, and administrators and, if and when there is a medical or other emergency to report, to call school security or 911. We do not think it makes sense to pull the plug on applicants that have invested or would like to invest in bringing POTS or any other type of voice service to the classroom.   In today's world, teachers should have as many communications tools at their disposal as possible -- not fewer. For many applicants, especially those who face incredibly difficult budget choices, the reality is that removing telephone service from the ESL would translate into fewer teachers having direct access to telephone service. That, we believe strongly, would be a regrettable step backwards for everyone.

Another important issue that is directly related to whether telephone service should be stricken from the ESL is whether the E-rate program should remain technologically agnostic.   If the Commission decides to make telephone service ineligible, would it include POTS and interconnected VoIP service or just POTS? If just POTS, why? What would be the rationale for subsidizing one flavor of service but not the other? Will taking telephone service off of the ESL, drive applicants towards VoIP LAN solutions, which might (or might not) make sense in any given case, especially if there is no funding available for internal connections (or even if there is). We believe, like the Commission believed in 1997, that telecommunications and technology decisions are best made, and thus should be made, at the local level.

B.   **Placing Applicants on Annual Funding Budgets Obviates the Need to Debate Whether or Which Services to Remove from the ESL**

Placing every applicant on an annual E-rate funding budget, as we have proposed, will guarantee to applicants the ability to make these kinds of decisions at the local level and, moreover, to make them responsibly and cost effectively.   In sharp contrast to the blank-check structure that exists today, making these local decisions under a funding budget system will make it impossible for any given applicant's decision to affect how much funding the Commission will be able to make available to other applicants.   Every school and library could decide for itself whether it makes sense to spend a portion of its annual allotment of E-rate discounts on telephone service, paging, webhosting or

anything else the Commission may be considering removing from the ESL. Under the per-applicant budget application system that FFL has proposed, if one school district decides that every classroom should have a POTS line and another school district decides that a commercial webhosting solution is exactly what its needs, those locally-driven decisions cannot affect any other applicant.   These types of decisions can only affect the balance of potential discounts that remain within each school district's annual E-rate budget.. Hopefully, every school will make the best possible use of their E-rate discounts based on their local needs and technology readiness. Certainly, some will make better use of their discounts than others. Fortunately, under the FFL proposal, individual applicants will no longer be punished for pricey and/or ineffective choices that their colleagues may have made.

What's more, if the Commission adopts annual, applicant funding budgets, instead of contracting the ESL, the Commission will be able to expand it. Take ineligible network security solutions for example.   In 1998, when the E-rate program began, cyber-attacks and viruses were nowhere near as numerous, sophisticated, and potentially destructive as they are today. In 2013, keeping networks safe and secure is absolutely key to keeping information flowing uninterrupted to and from classrooms and library buildings. If an annual applicant budget system were in place, the Commission could easily address this development by making network security solutions eligible and not have to worry about how much funding any given applicant might request for it.

By expanding the menu of eligible services every year, the Commission could help applicants, who are ready, keep pace with the rapidly changing world of technology and telecommunications. When something new comes along, like managed, wireless LAN services, a potentially cost effective solution to the challenge of getting large numbers of students connected wirelessly to the Internet at high speeds, applicants can start taking advantage of it as soon as the Commission adds it to the list. When an organization, in its comments, credibly suggests that "old" technology like caching servers can help applicants conserve bandwidth and thus save money, the Commission can add it to the ESL and see if the commenter is correct.

The E-rate architecture that we are urging the Commission to adopt will enable it

to experiment and to collect valuable data. With better data mining tools, the Commission will be able to determine who is buying what, how much of it they are buying, and how much they are paying for it. Afterwards, the Commission will be able to follow up with applicants to gauge the effectiveness of those purchases. Under a system of per-applicant funding budgets and an expanded ESL, the Commission will be able to gauge the effectiveness of the widest range of services and solutions possible and help schools and libraries to discover what is working and what is not and whether the new and promising, cutting edge technologies on the ESL appear to be fulfilling their promise.

C. Removing Items from the ESL Does Not Spur Cost-Effective Decision Making

In the early days of the E-rate program, schools requested more discounts for paging service than they do today. Similarly, in the early days of the E-rate program, schools requested discount for data drops in classrooms far more than they requested wireless local area networks (Wi-Fi was not around back then.) Today, demand for paging services is essentially zero, and the demand for Wi-Fi in schools far exceeds the demand for traditional wired drops in classrooms.

This dramatic shift came about because schools had the freedom to choose what worked best for them. These changes were not the result of careful pruning of the ESL. Furthermore, these changes did not occur because of Form 471 certifications, threats of LCP violations, USAC technology guides, or new found access to consortia pricing.

Nearly every school in America is struggling with their budget. Administrators, finance officers, and community volunteers are doing everything that they can to make ends meet. Many of these schools are literally scraping by, selling cookie dough and washing cars to get equipment and supplies into their classrooms. With all due respect to the FCC, these schools do not need any further incentive to find cost-effective solutions or adopt advanced technologies. These schools will quickly run to the latest technologies that save them money and help them educate their students. The FCC does not need to help them choose services or design their networks any more than the FCC helped them migrate away from data drops to Wi-Fi or drop their paging contracts the past 16 years.

VIII. **THE PROPOSAL NOT TO GRANT APPLICANTS ADDITIONAL TIME TO RESPOND TO PIA REQUESTS DURING THE APPLICATION REVIEW PROCESS SHOULD BE REJECTED**

To speed up the application review process, the Commission has proposed that USAC no longer grant any deadline extension requests during the PIA application review process. We urge the Commission not to adopt this proposal.

USAC should continue to allow at least one extension per PIA request and more if a reasonable explanation is provided. There is no value to any school or library, and certainly not to the program's overall goals and objectives, if applications are simply denied because of the failure of applicants to meet an arbitrarily imposed administrative deadline. Nor is this a very good way to further the Commission's goal of reducing appeals, since this will result in appreciably more of them.

With all due respect, this is not a good idea. Not granting extension requests during the PIA process is extraordinarily unfair to applicants and assumes incorrectly that USAC's PIA staff regularly perform their application review work efficiently, clearly, timely, totally logically, and in as unburdensome a manner as possible. Moreover, not allowing extensions will result in large numbers of applications being denied, which in turn will lead to the Commission being deluged with waiver requests. As a direct result of this proposal, the application chokepoint will move from USAC to the Commission, and schools and libraries -- the program's beneficiaries -- will be forced to suffer needlessly. Only USAC, whose job it is to review applications, stands to benefit from this proposal.

One thing the Commission can certainly count on if it adopts this rule is that applicants will be afraid of losing all of their funding because of one late response to a USAC deadline. This will force more and more of them straight into the outstretched arms of attorneys and consultants, who will help them respond to USAC's inquiries and file waiver requests with the Commission on their behalf. Ironically, the net result of all this will be that, rather than E-rate reform limiting the need for applicants to seek professional guidance and advice, it will have the exact opposite effect.

At first blush, giving applicants 15 days to respond to USAC's questions and

requests for documentation and certifications might seem reasonable. Sometimes it is. More often, though, it is not.   First, applicants do not actually have 15 working days to prepare a response. Since the time period includes a minimum of 4 weekend days, that leaves at most 11 business days to complete the work. Second, USAC's questions are frequently either so packed with jargon, complex, poorly worded, or sparingly cryptic that they require further clarification from USAC before anyone can possibly answer them.   Third, it is not unusual for USAC to request large volumes of contracts, competitive bidding documents, invoices, bank records, NSLP records, and other documents that are impossible to retrieve quickly and without a great deal of work. Fourth, sometimes the staff person working on responding to USAC may have to contact multiple departments or an outside source to obtain the necessary confirmations or documentation.

Finally, the subjects of USAC's inquiries are not major U.S. corporations; the vast majority are very small organizations with very limited resources and, especially in these tight economic times, very thin staffs. Many applicants do not have the kind of experienced staff people, which responding to USAC's requests all too often requires, available to handle the kinds of complex and time-consuming inquiries that USAC tends to throw at them. Also keep in mind that, at any given time (and that time is often the time when USAC wants a response), the specific staff person may be working on a different PIA question for another funding year, providing service delivery or payment verification to USAC, preparing to post a Form 470 for the next funding year, or completing a PQA response.

IX. HOW TO IMPROVE THE PIA APPLICATION REVIEW PROCESS

FFL has 16 years of experience working directly with USAC. During that time we have dealt with virtually every E-rate issue imaginable. Based on that experience, here are just a few of our observations about how the PIA application review process works and how it can be improved. We would be happy to share more of them, if the Commission is interested.

A. Observations

- USAC requires that all applicants and service providers respond to its information requests within a given time period, yet once USAC has received that information back, there is no limit on how much time USAC may take to issue an FCDL, pay an invoice, or complete its processing of any other form.

- The Commission should begin by focusing its attention on USAC's practices and procedures, and not on how to punish applicants for not being able to respond to every one of USAC's requests within 15 days or less.

- Already this year, we have observed PIA requests going back and forth between USAC and the applicant multiple times. In one particularly long back and forth, USAC required the applicant to respond 26 times, and that was not because USAC was working hard to ferret out information. Indeed, even toward the end of the process, USAC was still requesting basic information, like a contract's scope of work.

- What happens all too frequently during the PIA process is that an applicant will receive an inquiry from PIA, respond to it, and then hear nothing back -- absolute radio silence for months on end. When the Commission hears complaints about applicants being frustrated, this is one of the big reasons why.

  In one recent case, USAC contacted a state contracting agency because an applicant's funding depended, according to USAC (which is another story entirely) on whether or not the agency was an educational service agency (ESA). The state representative responded promptly, and then the PIA reviewer did not respond to the applicant for another <u>17 months</u>. When the inquiry finally resumed the PIA reviewer picked up exactly where she had left off, exploring the exact same ESA issue all over again. What is interesting about this example is that PIA's questions were directed towards a third party, which makes us wonder what would have happened if the Commission's strict 15-day deadline rule had been in effect. Would it have given USAC the authority to penalize the applicant, if the third party had missed one of USAC's 15-day deadlines to respond to a request?

- Using FFL's E-rate Manager®, we can see that applications move back and forth frequently from status to status: from initial review to awaiting applicant documentation and then back to initial review, or on to quality assurance and then back to initial review. We have observed that applications often sit in the first and final stages of the PIA process for months at a time with no explanation. When this happens, it appears to applicants that their applications are either stagnating in the agency somewhere or lost on a reviewer's desk. Occasionally, an applicant or a

consultant can manage to shake a "dormant" application loose by making multiple calls to the reviewer.

- The examples of applications, extension requests, product substitutions, invoices, BEARs, and other forms or requests pending at USAC indefinitely are numerous. Though we full understand that USAC has an obligation to conduct reviews and ask for supporting documentation for all submissions we simply request that USAC position itself and its online tools in such a position that it can report the status of any pending submission so that all parties can stay informed.

B. Recommendations

- <u>Improve Speed, Transparency, and Due Process</u>

  o Require USAC to stay in regular contact (once every two weeks at least) with the applicant throughout the PIA review and payment process and to explain where in the process the application or invoice/BEAR form is.

  o The longer an application or any other form "sits" at USAC, the more information USAC should make available to the applicant and service provider about that form – e.g., who is currently reviewing it, who else needs to review and approve it, problems with it if any, what if anything the applicant could do to speed up the process, and by what date USAC expects to complete its review and issue an FCDL.

  o If USAC cannot review an application and issue an FCDL within 90 days of beginning its review of that application, USAC should be required to explain to the applicant, in writing, why not. At that point, the applicant should have the right to ask the Commission to review the matter and, if appropriate, order USAC to expedite the process and issue an FCDL.

  o Make USAC publicly accountable for both its actions and inactions. Direct USAC to make available the status of every form filed, along with the amount of time it has been at that status (30 days, etc.) The status history should also be made available so that the applicant can see progress. At every stage of the process, let the applicant know whom to contact for information about its pending form. This type of transparency promotes public accountability and will help with ongoing process improvements at USAC.

o To help with transparency, USAC should make form processing statuses for all forms and applications available on its website and report this information to the USAC Board on a quarterly basis. This should include a count of days for how long each form has remained at a particular status. This should include Forms 470,471, 472, 474, 500, 486, service substitutions, SPIN changes, Invoice extension requests, and so on. Requiring USAC to report regularly to the board, applicants and service providers is the most reliable way to incentivize USAC to streamline and speed up the process.

o Direct USAC to establish a "Form-Status Help Line" to enable schools, libraries, and service providers to register their concerns and request information about the status of their pending applications and delayed forms. "Help Line" calls and emails should be taken seriously; they should be logged and annotated, and senior USAC officials, the USAC Board and the FCC should review the logs on a regular basis for consistent themes.

o In addition to establishing a "Form-Status Help Line," USAC should invest its ombudsman with real and meaningful authority to disseminate useful information to applicants and service providers and to step in and "make things happen." Today, quite frankly, contacting USAC's ombudsman to check on the status of a long overdue FCDL or any other decision is pointless. Our experience, echoed by numerous others who have interacted with USAC's ombudsmen over the years, is that when you ask the ombudsman about the status of an application or a form, all you hear back is that it is pending and to check back in a month. Sometimes, this goes on for months on end with no explanation. Either the Ombudsman should be empowered to provide information or applicants should be provided with an alternate method for receiving a status update and meaningful information about what they can do or provide to help USAC with its review or form hold situation

o We appreciate that USAC sometimes must hold up on processing applications and invoices because either the applicant or the applicant's service provider is under investigation for serious rule violations or worse. USAC should not, however, be permitted to use this as an excuse to hold up the processing of a form indefinitely. Stamping a form with the words, "Under Investigation," should not be enough to let USAC completely off the hook so far as its responsibility for approving or rejecting the form is concerned.

Questions such as, is the alleged violation substantial, is it credible, and does it or can it affect the specific funding request or invoice payment, are relevant and important, yet USAC routinely keeps applicants and service providers in

the dark so far as the answers are concerned. Indeed, the way the "process" works today, applicants and service providers have no way of knowing whether any of these questions are even being asked. This is a very serious problem, one that we urge the Commission to address quickly. As a starting point, the Commission needs to adopt rules that strike a reasonable balance between its very strong interest in maintaining the integrity of the process and applicants' and service providers' equally strong interests in receiving their E-rate discounts in a timely manner.   In circumstances where an allegation of wrongdoing has been made and an application or payment is being held up, it is imperative for the Commission to monitor the situation closely and to make sure that USAC resumes processing the application or payment as soon as it becomes reasonably possible to do so.

o   Instruct USAC to stop asking third parties to validate an applicant's certification that a school building is open or closed, that its NSLP data is correct, or to validate any other certification where the third party has no choice but to rely on the information it received from the applicant. All too often, this is why the PIA process gets delayed or takes much longer than necessary.

Today, if the data that a school reports on a Form 471 application does not match publically available state or NCES data, PIA reviewers require a third party to verify it. They do this even though the data that the state or NCES has may not be as current as what the school reported on its 471 application, and even though the data that the state or NCES is going to use to verify the school's data is the same data that they received from the school.   The most common source of third party validation is the State E-rate Coordinator. Frequently what happens is this: (1) State E-rate Coordinator receives third party validation request from PIA; (2) State E-rate Coordinator reaches out to the school to confirm that the data it reported on its 471 application is accurate; (3) the school indicates that it is; (4) State E-rate Coordinator verifies to PIA that the school's data is accurate.

The only organization in a position to verify the accuracy of information reported to USAC about a school's students, buildings, and operations is the school that reported the information in the first place. Asking a third party to verify that kind of information does nothing but waste everyone's valuable time. With respect to NSLP data specifically, copies of NSLP claim forms, signed SNAP reports, nutritional service software

standard reports, and a certification signed by the appropriate school district official provide PIA reviewers with far more credible evidence that the school's NSLP data is valid than the statement from a State E-rate Coordinator that the applicant's data is accurate.

o If Third party documentation is required as part of USAC's administrative procedures we simply ask that the FCC clarify what third party is and revise the application submission to meet those requirements. It is unfair that third party validation can vary from one application to the next and is sometimes necessary and is not for other similar situations. If the state is the only party that can validate and entity's existence or its NSLP data then each state should be required to publicize the most current data on an accessible website so that applicants can update and verify its accuracy. This process takes up much time for applicants and for USAC PIA reviewers.

- Standardize the PIA Review Process

  o The PIA review process appears arbitrary and varies from reviewer to reviewer. In the same or very similar circumstances, different reviewers ask for different things or the same things at different times. Consequently, applicants never know what to expect, which makes it extremely difficult to be prepared for the next set of questions, let alone the next review. Therefore, PIA review processes and procedures should be standardized so that (1) PIA reviewers know what to ask for every time and in what order to ask for it; and (2) applicants know what to expect and can be prepared to respond promptly to USAC's requests as soon as they arrive.

  o Direct USAC to create a PIA Review Administrative Procedures Manual for PIA reviewers that includes detailed instructions on how to conduct a PIA review from beginning to end and require PIA reviewers to follow it. Further, make it available to applicants and enable applicants to seek recourse if USAC fails to follow its guidelines.

- Direct USAC to Correct its Own Clerical and Other Obvious Errors Quickly

  o Even when USAC makes an obvious mistake, one that it acknowledges, it almost always requires the applicant to file an appeal to get it corrected. This moves the matter off of USAC's plate, but at what cost to the applicant and the process? When USAC makes a mistake like this, it should be required to

exercise its authority to correct it immediately; if it lacks that authority, the Commission should grant it to USAC as quickly as possible.

o   Here is an example: USAC denied an applicant's funding request because, USAC said, the applicant had failed to respond to its inquiry within the allotted time period. In this particular situation, the deadline fell on a weekend, which meant that the deadline had been extended automatically to the following Monday, which was when the applicant submitted its response. Thus it was obvious that a mistake had been made. Nevertheless, to get its application back on track, the applicant was required to go through the time and expense of filing an appeal. On appeal, the error was corrected and the previously denied application placed back in the queue for review.

o   The entire application review and payment process is unfortunately replete with complexities and gotchas like this one. The lack of authority granted to USAC to correct mistakes like this one forces many applicants to look for outside help.

X.   PERMIT USAC TO ISSUE MULTIYEAR FUNDING COMMITMENTS

The Commission should amend its rules to permit USAC to issue multi-year funding commitments. The longer-term commitment of E-rate funding will have numerous benefits. A multiyear FRN will:

- Help to improve applicant budgeting and technology planning.

- Increase the predictability of funding. Being able to count on a funding commitment beyond the first year of a project will enable applicants to plan the use of their E-rate supported goods and services much more effectively.

- Increase funding utilization, because the longer it takes to receive a funding commitment, the less likely an applicant is to use all or part of its funding.   A multiyear funding commitment will effectively reduce the waiting time for an FCDL to zero days in the outer year(s) of a multiyear commitment. Higher funding utilization rates obviously reduce the amount of funds that will be available for rollover. Thus multiyear funding commitment address concerns that Commissioner Pai has raised about large amounts of funding currently not being put to use.

- Empower applicants to take on more capital-intensive projects to increase broadband capacity by guaranteeing multiple years of funding for large P1 projects, which the rules require be amortized over a period of at least three years.

- Incent more vendors to participate in the E-rate program and to offer more cost-effective solutions because they can count on their customers receiving more than one year of funding at a time.

- Reduce the administrative costs associated with preparing and reviewing requests for E-rate funding.

XI. SOME SERVICES SHOULD BE ADDED TO THE ESL, BUT OTHERWISE IT SHOULD REMAIN THE SAME

A. Adopt Per-Applicant Budgets and Then Add Services to the ESL

As we discussed in Section III, B, another important benefit of adopting a system of annual, per-applicant budgets is that it will enable the Commission to add services freely to the ESL *without having to worry about how the demand for discounts on those services will impact the availability of funding overall*. This, in turn, will enable applicants to decide, based on local budgeting and other local considerations, which eligible goods and services they need the most and, from among those, which ones will help them to achieve the goals set forth in the President's ConnectEd initiative the fastest.

We believe strongly that the only way to achieve the President's ConnecEd goals is to give applicants as many roads as possible to get them there. It could be WAN-related build-out expenses or network efficiency devices, such as caching servers and bandwidth management devices, or network security software, or even managed wireless Internet service. Indeed, there is no good reason not to add any service, piece of equipment or component to the list if it will help schools and libraries realize the connectivity and capacity goals that they are trying so hard to achieve. We should not forget that the E-rate program was designed specifically to foster and promote high-speed connectivity via the widest array of solutions possible. Thus whatever is available today and anything that becomes available tomorrow that can help schools and libraries get where they need to go should definitely be included in the ESL.

B. Adopt Per-Applicant Budgets and There Will be No Need to Eliminate any Services from The ESL

As we also discussed in Section III, B, another important benefit of adopting a system of annual, per-applicant budgets is that it will enable the Commission to maintain

the ESL as is, *without having to worry about how the demand for discounts on those services will impact the availability of funding overall.* Thus eliminating voice, e-mail, paging, and/or web hosting services, and/or internal connections, such as file servers, would not only be unnecessary, there would be good, solid policy reasons for keeping all of them on the list.

C. Discounts for Non-Instructional Buildings Should Not be Phased Out

It is not a very good idea, in our opinion, to phase out discounts on eligible services provided to non-instructional buildings. In virtually all cases involving multi-site school districts, telecommunications and Internet services are procured, purchased, and provided to an entire school district. It is easy to understand, therefore, why site breakdown detail is not included in most invoices for these kinds services. Without this kind of detail, cost allocation becomes next to impossible. Zeroing in on specific buildings and trying to determine what percentage of the service as a whole is going to be or was provided to them in any given month and how much that sliver of service will be or was worth would be excruciatingly difficult to say the least.

On the flip side, the cost of providing these kinds of services to non-instructional buildings tends to be low relative to how much it costs to deliver the same services to instructional building, especially in medium, large, and very large school districts. Moreover, what about the numerous buildings that school districts use for both instructional and non-instructional purposes? In small districts, that is especially common. Would the Commission address this issue by requiring applicants to cost allocate a cost allocation? – in other words, first, cost allocate the estimated percentage of eligible services provided to the building, and then, cost allocate the estimated percentage of the cost allocated amount provided to non-instructional rooms and/or staff people in that building?

In short, phasing out discounts on services provided to non-instructional buildings would be a procedural nightmare. The inevitable result would be increased complexity, much more paperwork, loads more review time, elevated levels of frustration and lots more appeals -- all at a time when the Commission is trying very hard to simplify and

streamline how the program operates.

XII. THE DISCOUNT MATRIX SHOULD <u>NOT</u> BE REVISED

There are two reasons why some stakeholders believe it would be a good idea to revise the discount matrix downward: (1) to help ensure that there is enough money in the fund to fund Priority One requests every year and, hopefully, at least some Priority Two requests too; and (2) to incentivize applicants to spend their E-rate dollars more wisely. We do not share their belief.

High-discount schools are <u>not</u> the problem. Big Spenders are the problem. They are the applicants who the Commission needs to rein in. They are the applicants who request much more than their fair share of what the Commission makes available every year -- theoretically to everyone. In FY 2013, for example, most of the country's high-discount (81% -90%) schools requested less than $200 per student in funding. In sharp contrast, the biggest-spenders, 738 applicants who collectively represented less than 5% of the nation's students, requested more than $600 per student. Together, those 738 applicants accounted for 30% of the total demand for E-rate funds that year.

In thinking about and analyzing this issue, there are two important questions that people should be asking themselves. First, why are we being forced to have this discussion at all. The answer is simple. The E-rate program was constructed on a very weak financial foundation, and if we fail to repair it now, the entire structure could very well collapse. Second, why should we force the nation's poorest schools and libraries to pay for all or a disproportionate share of the repair bill, when they are not to blame for the program's structural weakness. The answer, of course, is that they should not be.

Despite the best of intentions, it never made sense for the program's architects to allow applicants to request as much E-rate funding as they wanted every year. That "all you can spend" style of funding was a recipe for disaster from the get-go, as evidenced by the torrent of waste, fraud and abuse that followed the program right out of the gate and the program's perpetual shortfalls in funding.

In 2003, as we have already discussed, USAC's Task Force on the Prevention of

Waste, Fraud and Abuse recommended that ceilings be placed on the amount of annual funding that any one applicant could receive, but that never happened.[13] Why? Because getting consensus on an issue like that is hard work. Limiting anything is never easy.

So, rather than making all of the schools and libraries in all of our nation's most economically disadvantaged communities bear the brunt of our collective aversion to hard work, isn't it about time we rolled up our collective sleeves, sharpened our pencils, and completed the important work that the Task Force started more than a decade ago.

As a tool for helping to fix the E-rate funding crisis and to encourage applicants to plan and spend more carefully, we believe that implementing a system of annual, per-applicant budgets easily trumps the lowering of discount rates. The beauty of budgets, besides the obvious, is that it manages to accomplish much the same things as lowering discount rates would plus more, but without the need to single out a group or groups of applicants for punishment.

Clearly the time has come to close down the 16-year-old, blank check approach and put every applicant on a reasonable budget. On top of this new, stronger foundation, every E-rate applicant will have to operate within the confines of a reasonable, annual budget, which is something they are already used to doing in every other aspect of their school and library operations anyway. To stretch the E-rate dollars in their budgets as far as they can possibly go, applicants will have no choice but to plan and spend wisely and to drive the hardest bargains they can with their vendors and service providers.

XIII. DO NOT ELIMINATE SITE-SPECIFIC DISCOUNT RATES

We do not understand why the Commission would want to eliminate site-specific discount rates. Public school districts collect and report NSLP data to the state by school

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[13] Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse Convened by the Schools and Libraries Division, Universal Service Administrative Company, at 5 (Sept. 22, 2003) http://www.FundsForLearning.com/docs/2013/02/ErateTaskForceReport.pdf)

anyway, so eliminating site-specific discount rates is not going to lessen their workload substantially. If the objective is to reduce the administrative burden on applicants and speed up the process, the Commission should direct USAC, as we have already discussed, to stop asking for third-party validation of NSLP data, as no other party but the applicant is actually in a position to validate that data.

One of the basic tenets of the E-rate program has always been that the schools serving the most economically disadvantaged households should receive the highest discount rates. That policy still makes sense, and it is still important, so why move away from it now?

Today, when a school district applies for discounts on internal connections, USAC verifies the NSLP data for the <u>one school</u> at which those internal connections are going to be installed. It does this to ensure that the data supports the site-specific rate for that school. If the Commission substitutes shared district-wide rates for site-specific rates, the administrative burden on USAC and applicants will explode.   Why? Whenever a school district requests discounts on internal connections for one or more of its schools (assuming there is any funding for internal connections), USAC will have to verify the NSLP data for <u>every school</u> in the district to verify the shared district-wide rate that applies.

Today, when there is a funding shortfall for internal connections, funding requests at 90% receive first priority, then 89%, then 88%, and so on. Together with the elimination of site-specific discount rates, the Commission has suggested a different priority system. Under this new system, individual schools and school districts that have the highest percentage of low-income students would receive first priority in the first year of the new system. If any money remained after funding that group, schools and school districts with the next highest percentage would receive funding and so on. Funding would begin the following year at whatever percentage point the funding ran out the year before. If adopted, this new system of priority will create a gold rush for funding unlike the Commission has ever seen before (again, assuming there is any funding available for internal connections).

This is what will happen. Whenever a school district's "number" is likely to come up, every school in the district, from the wealthiest to the poorest, will be in a position to receive funding. Rest assured, when the largest schools in the country, many of which have extremely high percentages of low income students, believe there is a good chance that their numbers will be called, they are going to do everything humanly possible to request as much funding as they possibly can for as many of their schools as they possibly can. Indeed, every applicant is going to do this, not just the largest ones. Who could blame them? Under this system, once they get their bite at the apple, there is not going to be any way for them to predict if and when they will ever get to take another one. This kind of priority rule will exacerbate the funding crisis; it will not ameliorate it.

XIV. DO NOT CREATE MULTIPLE DISCOUNT MATRIXES

The current P1 versus P2 system creates ample incentive for applicants and service providers to game the system. This is not unusual or particularly novel. If "A" gets funded but "B" does not, most individuals will want "A". Varying the discount matrix for different services will only amplify this effect.

Furthermore, multiple matrixes will lead to administrative headaches. If the service category of an FRN is switched, the funding request amount will need to be revised, creating new administrative procedures and more opportunities for applicant mistakes, undermining the Commission's desire to streamline administration of the E-rate program.

XV. BE WARY OF THE BENEFITS OF CONSORTIUM PURCHASING

The Commission seems to believe that much of what currently ails the E-rate program can be cured if only more applicants would turn to consortiums for E-rate purchasing. The Commission's original E-rate order also encouraged the formation of consortia for this purpose, so this is not a new idea. What sixteen years of experience illustrates quite clearly is that, in the right circumstances, consortia can and do provide the help that some applicants need, but that they are not necessarily the best option for

everyone. In addition, lurking behind the consortia curtain are E-rate-related administrative dangers that no school or library should ever overlook. Here are some examples:

- Because of their complexity, consortia applications generally take much longer for USAC to review than individual applications. This means that they typically do not receive funding commitments until very late into the funding year. It takes an average of 160.1 days for consortium applications to go from submission to FCDL, according to a recent FFL analysis of USAC funding data[14].

- If USAC has a "problem" with just one member of a consortium or one of the consortium's vendors, it can and frequently does tie up funding for the entire consortium with no ability for the consortium lead to find out information.

- Along with turning over responsibility for procurement, accounting, payments and recordkeeping to a third party consortium comes less work, but also the potential for E-rate disaster. If the consortium leader makes an "E-rate mistake" or does anything else wrong, every member of the consortium will suffer the consequences.

- Some state and regional consortia charge schools and libraries an administrative fee for participating in the consortium.

- E-rate consortia audits tend to be long and difficult. Consortia and individual applicants are subject to the exact same E-rate recordkeeping requirements, but it is not always easy for consortia to collect from its members the supporting documentation they need. Nevertheless, when audited, they are required to produce it. If they do not, an order to return funding is always a possibility.

- Consortia may be valuable for some types of purchasing but not for others. For bulk purchasing, consortia may be able to garner very low prices. When it comes to building out the last mile of network connections, however, consortia may not necessarily be in a position to negotiate the best solution and/or price.

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[14] http://www.fundsforlearning.com/blog/2013/08/the-waiting-game:why-some-applicants-wait-longer-for-fcdls

XVI. MODIFICATIONS TO THE E-RATE PROCUREMENT PROCESS

A. Separate Rules Should NOT Apply to Applicants that Receive No Bids

The Commission should not require separate requirements for applicants that receive no bids to ensure that services are procured at reasonable prices. In our professional experience, much of the time only very small schools receive no bids, and that tends to be because service providers do not want to spend time submitting bids for such small purchases. Consequently, overlaying a separate set of procurement rules over the current rules will primarily impact small schools, making the process even more daunting than most of them believe it already is. Moreover, the amount of funding involved in any given no-bid situation or even in the aggregate for that matter is unlikely to amount to very much, and the premium, if any, even less. Finally, if the Commission required applicants to operate under annual funding budgets, there would be generous incentive for applicants to ensure that they were not overpaying for E-rate-supported goods and services.

B. The Form 470 is Important and Should not be Eliminated

As a practical matter, the Form 470 is the only tool that many small and private schools have at their disposal to solicit competitive bids. Eliminating it will only increase the number of instances in which applicants receive either no bids or very few bids.

The Form 470 database is the central place to search for all of the E-rate eligible goods and services for which schools and libraries nationwide are in the market at any given time. After 16 years, the Form 470 and the process that goes along with it is familiar and comfortable to service providers. For them, it works.

Fundamentally, the requirement that a Form 470 be filed to kick off the competitive bidding process is a good one. That the Form 470 competitive bidding process as a whole would benefit from a little bit of tweaking here and there is obvious to everyone, but that the Form 470 itself has been effective in generating competition for E-rate goods and services is equally evident.

C. A Contract Should NOT be a Prerequisite to Filing a Form 471

The Commission seeks comment on whether to revise the deadline for applicants to sign a contract with their service provider, noting that "sometimes applicants have difficulty obtaining signatures or final board approvals prior to their submission of their FCC Forms 471, as is currently required by the E-rate rules."

Frankly, why the rules require an applicant to have an enforceable contract in place for something E-rate eligible before it may apply for discounts on those goods or services has always been a mystery. The focus of the E-rate program has always been on driving down prices for eligible services through competition. Nevertheless, over the years, the process of getting an E-rate application approved has oftentimes felt like a law school exam in contracts – i.e., was the contract signed, what color ink was used to sign it, did both parties sign it, did it need to be approved by the board of education to be effective, and so on and so forth. What difference does any of that make? None of it has anything to do with competition, and a contract is no evidence of competition anyway.

Perhaps the original rationale had something to do with the Commission wanting applicants to be able to support, in some objective fashion, why they have applied for discounts on the types and quantities of goods and services that they have included in their applications. That makes sense. However, if that is the rationalee, a contract is by no means the only or necessarily even the best objective evidence to support this goal, certainly not when so many of them are subject to myriad conditions and termination at will.

We submit, therefore, that the Form 471 contract prerequisite rule serves no useful purpose and worse, winds up derailing far too many requests for funding that in every other respect comply fully with the program's rules and regulations. At the end of the process, when it comes time for USAC to pay an invoice, USAC is not going to subsidize the service provider for any more than what the applicant requested originally and what its documentation supported, so we do not see how eliminating the contract requirement could permit or even encourage fraud. Accordingly, we urge the Commission to eliminate this requirement.

The prerequisites to filing a Form 471 should be: (1) completion of the competitive bidding process; (2) documentation proving to whom the applicant has awarded its business; and (3) documentation, such as a Letter of Intent or a signed or as of yet unsigned contract detailing what the applicant has agreed to purchase, how much of it the applicant is reasonably likely to purchase, and whatever price the applicant has agreed to pay for that amount. A rule like this will do wonders to help streamline the application review process, and more importantly, stop applicants from being denied simply because they cannot prove that they had legally binding contracts in place before filing their Form 471 applications.

D. Certification of Compliance with State and Local Procurement Rules Should be all that the Rules Require

Whether an applicant has complied with state and local procurement rules has been the bane of many an applicant's E-rate experience over the years. Did the applicant put a notice of its procurement in the local newspaper? If it did, did the notice run for a long enough time? This is the kind of review that has managed to sidetrack or even completely derail enormous amounts of E-rate funding. Should the Commission care? No. Should the Commission, a federal agency, be diving into these kinds of local issues? No. Does the Commission or USAC have the expertise or resources to be reviewing and deciding issues of such local concern to thousands of communities across the United States and its territories? No. The Commission and USAC have more important concerns.

These and other local procurement matters should be left to the parties and the states in which they reside to handle and decide them. State and local authorities have as much, if not more, interest in preserving the integrity of their state and local procurement processes than the Commission does. It should not be necessary for the Commission to resolve state and local issues, especially when the state and local representatives themselves do not believe that there are any state or local matters of any substantial interest that need to be decided.

If a bidder or potential bidder believes that an applicant failed to follow its local

rules, and that it was prejudiced by that failure, there is plenty of local recourse for that kind of allegation.   If the bidder or potential bidder decides not to take advantage of it, the Commission should not, *de facto*, establish a parallel federal procedure for the purpose of hearing local complaints.

If an applicant certifies that it has complied with all of its state and local procurement rules, that should be enough. As we said before, neither the Commission nor USAC has the expertise, the resources, or the time to get itself mired in these matters of such local concern. If there is evidence that the applicant's procurement process was unfair or violated program rules in some other respect, THIS is the kind of issue that USAC should spend its time investigating.

XVII. DO NOT REQUIRE ADHERENCE TO SPECIFIC TECHNOLOGY STANDARDS

The Commission has also requested feedback on whether the Commission should adopt specific technology standards to which applicants should be required to adhere. For instance, should the Commission put a limit on how many wireless access points per room or per building the E-rate program will support? Should similar limits be placed on routers, switches and other internal connections? Should the Commission define what the quality and/or speed of an applicant's network connections ought to or needs to be? Should the Commission establish guidelines on purchases of certain kinds of equipment based on a reasonable assessment of what per-classroom, per-teacher, or per-library technology needs might be? In our opinion, the answer to all of these questions is "no."

There is no one-size-fits-all approach to technology and telecommunications. It is impossible. It simply cannot work. As much as the Commission might like it to be true, it simply is not true that there are benchmarks, a bright line test, or a magic formula out there somewhere to determine whether a school or library is working as "cost effectively" as possible to meet its goals and objectives in the area of technology and telecommunications. The variables are just too numerous.

The E-rate program was founded on the principle of "technological neutrality." The authors of the program knew it would be problematic to dictate technology and telecommunications solutions to the thousands of unique schools and libraries scattered

across the mainland of our country, Hawaii, Alaska, and territories that stretch half way around the globe -- some with buildings just a few feet from fiber and others with buildings effectively light years from the nearest strand; some located in arctic cold and others in arid desert; and some who have teachers who embrace technology and others who are not so fortunate.

They knew that technology would evolve much more quickly than they ever could imagine. They understood that the needs and technological progress of thousands upon thousands of schools and libraries would vary enormously – and they were correct.

Education professionals wrestle daily with issues of how, when and where to deploy technology. Associations such as CoSN (www.CoSN.org) and ISTE (www.iste.org) specialize in equipping them with tools and training to help them in this regard[15]. When it comes to technology, local and state government officials, administrators, teachers, parents, and even the students themselves are in a much better position than the Commission to decide how best to use local resources as "cost effectively" as possible to advance that ball down the field.

The Commission's role is to ensure "specific, predictable and sufficient" mechanisms to preserve and advance universal service. The Commission needs to ensure that there is an equitable distribution of funding. The Commission needs to make sure that all schools have access to those funds, that schools have adequate incentives to make good use of those funds, and that they do so in the intended manner.

To foster cost-effective decision-making, the Commission should be monitoring what applicants are doing -- not dictating what it thinks they should be doing. Respectfully, we believe that the Commission has no business trying to decide for every applicant what and how much to buy. Instead, the Commission should be determining whether an applicant has a plan for deploying technology and telecommunications, whether it is following that plan, and how its E-rate purchases are going to help the

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[15] For example, CoSN offers a Certified Education Technology Leader (CETL)™ accreditation. CoSN also provides an assessment to help school leaders evaluate technology investments. See www.cosn.org/voi.

applicant achieve its local goals and objectives. There is nothing wrong, in our opinion, with holding an applicant's feet to the fire by requiring it to include a brief narrative in this regard in its Item 21 Descriptions of Service. The combination of a watchful eye and annual, per-applicant funding budgets will be more than sufficient, we believe, to effectively incent applicants to deploy technology and telecommunications as "cost-effectively" as they possibly can.

XVIII. THERE SHOULD NOT BE MORE THAN ONE WINDOW APPLICATION PERIOD

A. The Program Will Not Benefit From Another Filing Window

One filing window is difficult enough, as evidenced by (among other things) the numerous requests that the Commission receives every year to waive the filing deadline, not to mention the Commission's decision to grant applicants some extra time automatically.

It is clear that the trends in technology point towards a blurring of lines and distinctions between goods and services, local and global. *Is my file stored locally, or is it in the cloud? Am I connected via cellular or Wi-Fi? Is this a VoIP call or Skype session? Who knows and does it matter?* In the world of a multi-window funding year, it absolutely would matter. Applicants and vendors would need to know ahead of time the service category where discounts on a product or service should be requested. Is this a P1 service or a P2 service? If an applicant is not sure, should they file in both windows? What if the service category of a funding request was changed during the application review process? Or what if the contract included both elements and the applicant needed approval for both before moving forward?

We are certain that whatever benefits might possibly be derived by establishing two filing windows, one for Priority One and the other for Priority Two services, would be outweighed by far by the additional layer of complexity and confusion that a second window would inevitably generate.

B. Establish Fixed Dates for One Filing Window

We have requested numerous times that the Commission set fixed dates for the

annual filing window. The lack of dependable dates is problematic and increases the likelihood that something will go wrong during the process. To prepare an E-rate application, it literally "takes a village." It requires participation from the technology, procurement, finance, nutritional service, accounts payable, and contracting departments, as well as from the administration, the school board and, in some cases, the school's legal staff and/or outside counsel.

When the filing window dates are announced well into the school year, schools are not able to adjust their holiday schedules, school board meetings or staff availability. During holidays and breaks, there is a good chance that at least some staff and other parties need to help prepare their E-rate applications may not be available to assist with that work.

Indeed, for the past three years, the filing deadline has fallen during many schools' spring break periods when many of them have been closed. In many instances, this made it extremely difficult for the staff left behind to complete E-rate applications to reach the people who could get them the documents and information they needed to prepare, certify and get those applications filed on time. Not to mention the burden placed on the administrators actually responsible for the successful submission of the E-rate applications.

A fixed filing window will benefit the program by:

- Enabling applicants to plan better
- Enabling USAC to allocate its resources more effectively
- Increasing the accuracy of service quotes and Item 21 attachments
- Reducing unnecessary anxiety and frustration
- Reducing the number of mistakes that applicants make on applications
- Reducing the number of waiver requests that applicants file every year
- Streamlining the application review and approval process

XIX.   USE FORM 471 FOR CIPA CERTIFICATIONS AND ELIMINATE FORM 486

We wholeheartedly endorse the proposal to move the CIPA certification checkbox from the Form 486 to the Form 471. If the Commission adopts this proposal, there will be no more need for the Form 486, which would enable the Commission to greatly simplify the program by eliminating this troublesome form. The incredible number of Form 486-related appeals filed every year should be enough to convince the Commission that this form desperately needs to go.

Requiring applicants to make their CIPA certifications on Form 486 has always been a problem because it is a form that many applicants have to file multiple times during the course of a funding year, while a CIPA certification, on the other hand, is a certification that the law requires them to make only once per funding year. The problem stems from the fact that the Form 486 is a multipurpose form that applicants are also required to use to inform USAC of service start dates. So every time they tell USAC that a service has started, USAC requires them to check the CIPA certification box on the form too -- even if they have done so multiple times before.

Because Form 486 links CIPA to service start dates, USAC mechanically and incorrectly applies the CIPA-driven 120-day filing deadline to the form and the services that appear on every Form 486 that an applicant files. This means that any time an applicant files a Form 486 more than 120 days after a service on that form has started -- notwithstanding that the 486 certification on the form might be the second or third or even the tenth one that the applicant has made that year – USAC always looks at how many days the form was filed "late" and then reduces the applicant's funding commitment accordingly. This has never made any sense. So here is an excellent opportunity to stop punishing applicants needlessly and to help unclog the appeals pipeline.

The good news is that moving the CIPA certification to Form 471 renders the Form 486 obsolete. That is because USAC can obtain service start dates elsewhere – that is, from the first submission that an applicant or a service provider makes for payment during the invoicing (SPI or BEAR) process. Note that that the absence of this CIPA-

certification/service-start-date form will not stop, hinder or in any way interfere with USAC's ability to do its invoice-related review work.

XX.   CIPA REQUIREMENTS DO NOT APPLY EXTRATERRITORIALLY TO NON-SCHOOL/LIBRARY NETWORKS OR TO FOREIGN DEVICES

CIPA only applies to a network-enabled device, in our opinion, when the following criteria are met:

> (1) the applicant owns the device;
>
> (2) the device is accessing the applicant's network; and
>
> (3) the applicant's network receives E-rate support.

Although the rules do not address explicitly whether CIPA's requirements apply to an applicant's devices that are taken off campus and used on other networks or to devices that an applicant does not own that someone brings onto an applicant's campus, it seems obvious to us that they do not. We believe that an applicant has NO obligation to regulate what its equipment can access on a foreign network or what someone else's device can access on the applicant's network. If the Commission requires every school and library subject to CIPA to monitor and control every foreign device that accesses its network and what every one of its own devices can access on a foreign network, the Commission will be requiring schools and libraries to do the impossible or, if not the impossible, something very close to it.

XXI.   MAKE REIMBURSEMENT PAYMENTS DIRECTLY TO APPLICANTS

We agree that the rules should be changed to permit USAC to reimburse applicants directly for E-rated supported goods and services that they have already paid for in full. This is a change that is long overdue.

The BEAR (Form 472) requires the signature of the service provider, thus allowing the provider the opportunity to review, verify and confirm that payment has been received. There is no good reason, therefore, why reimbursement payments should

be channeled indirectly through an applicant's service provider. The current system of sending reimbursements to applicants indirectly via their service providers is financially irresponsible and, moreover, does nothing to help schools and libraries that are struggling to manage their operations under budgets that are tighter than ever. What's more, service providers are unhappy with this process too, as it is time consuming, costly, and fraught with peril, as mistakes are not all that difficult to make. There is no question that this change will help to improve the efficiency of the program.

This change will not only help to streamline the process, it will reduce other problems that applicants have encountered. For instance, when a vendor goes out of business or merges with another company, applicants have no provider through which to receive their reimbursement. This results in a sentence to the Good Samaritan process where struggling for months to receive a reimbursement payment is the norm. Unless an applicant is extremely knowledgeable about the process, which is rare, or has a good consultant, the Good Samaritan reimbursement process rarely if ever runs smoothly. Quite frankly, it is absurd that a school or library should ever have to find itself at the mercy of a Good Samaritan in order to receive a payment to which it is entitled under federal law. Another example of the indirect reimbursement process directly causing a monumental headache occurs when a service provider decides without authorization and notwithstanding the prohibitions against it to apply a reimbursement payment to an unpaid invoice for another month, or to a different service entirely, or even toward a disputed payment.

XXII. KEEP THE 120-DAY INVOICE DEADLINE EXTENSION

We support the continued 120-day extension of the invoice deadline for applicants and service providers, so long, of course, as they provide a reasonable explanation for why it is necessary. The invoice deadline extension is required in numerous instances to enable applicants to collect the funds that have been committed to them for projects that are complete or about to be completed. Removing this extension opportunity would be of no benefit to the program. All it would do is penalize applicants and service providers that have been good citizens of the E-rate program.

We do ask that a simple online submission form be made available for these types of requests, one that includes the required certifications and an opportunity to write a brief explanation. We also ask that the status of all pending invoice requests be made available online.

XXIII. DO NOT EXTEND THE DOCUMENT RETENTION REQUIREMENTS

We strongly oppose the proposal to extend the document retention requirement from five to ten years. This is an unreasonably long amount of time to expect schools and libraries, especially the smallest ones, to hold on to that volume of data. The current 5-year requirement is long enough and, because of program-related delays, frequently winds up being much longer anyway.

The regulations require that documentation be retained for five years past the LAST DATE of service. This creates a six to seven year time period automatically, even for a one-year service, and that is assuming the application is funded in a timely manner. Seven years is how long the Internal Revenue Service requires taxpayers to retain their documentation, which, in terms of volume and complexity, is typically much less than what is associated with even the simplest E-rate application.

Five years is more than a reasonable amount of time in which to mount an audit of an E-rate application. If it currently is not, then we submit that the Commission should be directing its attention to fixing that problem, rather than proposing that additional administrative burdens like this one be added to the backs of applicants.

The Commission recognizes that equipment purchased with the help of E-rate dollars has a useful life of three years. That is why the Commission allows applicants to transfer such equipment from its original location after a 3-year period. Applicants should not be required to retain documentation related to the procurement, contracting, purchase of and payment for that kind of equipment for 7+ years after its useful life has ended.

Respectfully submitted,

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EXHIBIT A

Calculating Applicant Budgets and Floors

The examples below assume the following for purposes of illustration:

Average E-rate discount rate	**69.243%**
Total available funding for schools and libraries[16]	**$2,913,160,146**
K-12 students Total number of public and private[17]	**53,988,330**
K-12 school sites Total number of public and private[18]	**116,240**
Public library sites Total number[19]	**8,951**
Remote Rural K-12 sites Total number of public and private[20]	**7,554**

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[16] FY2013 inflation adjusted cap of $2,380,314,485 increased by 1.80% plus an estimated $490 million rollover from prior years.

[17] *See* http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2013312.

[18] *Id.*

[19] *See* http://www.imls.gov/assets/1/AssetManager/FY2010_PLS_Tables_1-7A.pdf.

[20] *See* U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "Public Elementary/Secondary School Universe Survey," 2010-11 v.2a and U.S. Department of Education, National Center for Education Statistics, "Private School Universe Survey (PSS)," 2009-10.

Allocating the USF Fund for Schools and Libraries

Funding is allocated proportionately between schools and libraries on a per site basis. The total available funding is multiplied by the percentage of sites belonging to each category.

$$\text{Available Funding for Schools} = \text{Total Available Funding for Schools and Libraries} \times \frac{\text{U.S. K-12 School Site Count}}{\text{U.S. K-12 School Site Count} + \text{U.S. Public Library Site Count}}$$

$$\text{Available Funding for Schools} = \$2{,}913{,}160{,}146 \times \frac{116{,}240}{116{,}240 + 8{,}951}$$

$$\text{Available Funding for Schools} = \$2{,}913{,}160{,}146 \times 92.85\%$$

$$\text{Available Funding for Schools} = \$2{,}704{,}869{,}196$$

$$\text{Available Funding for Libraries} = \text{Total Available Funding for Schools and Libraries} \times \frac{\text{U.S. Public Library Site Count}}{\text{U.S. K-12 School Site Count} + \text{U.S. Public Library Site Count}}$$

$$\text{Available Funding for Libraries} = \$2{,}913{,}160{,}146 \times \frac{8{,}951}{116{,}240 + 8{,}951}$$

$$\text{Available Funding for Libraries} = \$2{,}913{,}160{,}146 \times 7.15\%$$

$$\text{Available Funding for Libraries} = \$208{,}290{,}950$$

Per-Student Budget Calculation for Schools

A per-student budget factor is derived for school applicants through the following formula.

$$= \frac{\text{Available Funding for Schools}}{\text{United States K-12 Student Population}} \times \frac{\text{United States K-12 School Site Count} - \text{Remote Rural School Site Count}}{\text{United States K-12 School Site Count}} \times \frac{1}{\text{Average E-rate Discount}}$$

$$= \frac{\$2,704,869,196}{53,988,330} \times \frac{116,240 - 7,554}{116,240} \times \frac{1}{69.243\%}$$

$$= \$67.65 \text{ Per-Student Budget Factor}$$

To determine the total amount it can request in any given funding year, the applicant multiplies the per-student budget factor by its discount rate and its number of students (the below illustration uses the per-student budget factor calculated above as an example).

$$\text{Total Amount Applicant Can Request} = \$67.65 \text{ (Per-Student Budget Factor)} \times \text{Applicant's Discount Rate} \times \text{Applicant's Number of Students}$$

Remote rural sites double the result (the below illustration uses the per-student budget factor calculated above as an example).

$$\text{Total Amount Rural Remote Applicant Can Request} = \$67.65 \text{ (Per-Student Budget Factor)} \times \text{Applicant's Discount Rate} \times \text{Applicant's Number of Students} \times 2.0$$

School Applicant Funding Floor Calculation

A "funding floor" is derived for all school applicants through the following formula.

$$= \frac{\text{Available Funding for Schools}}{\text{United States K-12 School Site Count}} \times \frac{\text{United States K-12 School Site Count} - \text{Remote Rural School Site Count}}{\text{United States K-12 School Site Count}} \times \frac{1}{\text{Average E-rate Discount}}$$

$$= \frac{\$2,704,869,196}{116,240} \times \frac{116,240 - 7,554}{116,240} \times \frac{1}{69.243\%}$$

$$= \$31,422 \text{ Funding Floor}$$

To determine the minimum amount it can request in any given funding year (regardless of its per-student calculation), the applicant multiplies the funding floor by its discount rate (the below illustration uses the funding floor calculated above as an example).

$$\text{Minimum Amount Applicant Can Request} = \$31,422 \text{ (Budget Floor)} \times \text{Applicant's Discount Rate}$$

Remote rural sites double the result (the below illustration uses the funding floor calculated above as an example).

$$\text{Minimum Amount Rural Remote Applicant Can Request} = \$31,422 \text{ (Budget Floor)} \times \text{Applicant's Discount Rate} \times 2.0$$

Library Site Budget Calculation

A budget is derived for all library applicants through the following formula.

$$= \frac{\text{Available Funding for Public Libraries}}{\text{U.S. Public Library Site Count}} \times \frac{1}{\text{Average E-rate Discount}}$$

$$= \frac{\$208,290,950}{9,851} \times \frac{1}{69.243\%}$$

$$= \$30,536 \text{ Library Budget}$$

To determine the amount it can request in any given funding year, the library multiplies the library budget by its discount rate (the below illustration uses the library budget calculated above as an example).

$$\text{Amount a Library Can Request} = \$30,536 \text{ (Library Budget Factor)} \times \text{Applicant's Discount Rate}$$