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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of  
  
Schools and Libraries Universal Service  
Support Mechanism

CC Docket No. 02-6

COMMENTS OF THE EDUCATION AND LIBRARY NETWORKS COALITION

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## SUMMARY

The Education and Library Networks Coalition (“EdLiNC”) respectfully submits these comments in response to the Commission’s Notice of Proposed Rulemaking in CC Docket No. 02-6 (the “NPRM”). EdLiNC was formed to represent the viewpoint of public and private schools and libraries in the FCC proceedings concerning the implementation of the Telecommunications Act of 1996. The Coalition seeks to expand the use of educational technology and ensure that schools and libraries are aware and take advantage of the affordable rate, which is guaranteed to them in the Universal Service provisions of the Act. EdLiNC is a volunteer-based organization. Those members who are participating in this filing are identified at Exhibit A.

The EdLiNC community is encouraged by the Commission’s decision to address the issues outlined in the NPRM, because the discounts for schools and libraries established by the Commission pursuant to Section 254(h) of the Communications Act (the “E-Rate” or “E-Rate discounts”) have proven to be an enormous benefit to America’s schools and libraries. After five years, however, it is important that the Commission re-examine its rules to ensure that the original purpose and the full promise of Section 254(h) are being met.

The success of the universal service discounts for schools and libraries can be measured by the level of requests. The need for eligible services for fiscal year 2003 is estimated at \$5.7 billion, well over twice the \$2.25 billion cap imposed by the Commission. This success and showing of need proves that the Commission should not just maintain the E-Rate Discounts as they are constituted, but find equitable ways to strengthen and expand them.

Unused funds should be rolled over to the current funding year. EdLiNC strongly agrees with Commissioner Copps’s statement that unused funds should be rolled over to the current

funding year. Not only has this always been the general understanding of what the rule was intended to accomplish, but there is no real ambiguity in the rule, and in any event it makes no sense to effectively reduce the funding commitment when demand for discounts is more than double the Commission's cap. Rolling over unused funds to the current year could actually be used to help fund successful appeals, thus addressing another of the Commission's concerns.

EdLiNC opposes discounts for Internet access bundled with content. The NPRM asks for comments regarding when, if ever, discounts should be allowed for Internet access bundled with content. EdLiNC believes that the fundamental purpose of the E-Rate program is to fund telecommunications services, not content. Therefore, discounts for bundled Internet content should never be permitted. EdLiNC does support the FCC's current mechanism, however, which allows discounts on the telecommunications portion of a bundled offering under certain circumstances.

EdLiNC seeks changes that support the educational purposes of the program. The NPRM contains a number of proposals which offer the possibility of strengthening the educational purposes of the E-Rate program. EdLiNC believes that any change to the E-Rate should support those purposes, and that this goal should be the primary focus of any changes. Specifically:

- EdLiNC supports including wireless services and voice mail used for educational purposes in the definition of eligible services.
- EdLiNC supports restrictions on transferability of equipment, but believes that any rule must be flexible enough to allow for bona fide need.
- EdLiNC believes a bar or suspension for willful or repeated noncompliance would support the educational purposes of the program. Such a restriction should apply to providers as well as to applicants, and should be carefully crafted to apply only in the case of repeated and willful failure to comply with material provisions of the FCC's rules. Minor or inadvertent errors should not be used as an excuse to cut off participation, and the actions of paid consultants should not be imputed to their clients.

- Applicants should have the choice of paying the full cost of the service to the provider and being reimbursed by the Administrator, and paying only the discount price, leaving it to the provider to obtain the balance from the Administrator. Providers should not be allowed to dictate this decision.

In conclusion, the E-Rate discounts have undeniably provided much-needed assistance to schools and libraries around the country. EdLiNC applauds the Commission for its dedication to the careful implementation of Section 254(h) and its willingness to make further improvements. EdLiNC supports the Commission's efforts to improve the program, and urges the Commission to avoid changes that would impose unnecessary, ineffective, or duplicative regulation on schools and libraries.

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## INTRODUCTION

The Education and Library Networks Coalition (“EdLiNC”) respectfully submits these comments in response to the Commission’s Notice of Proposed Rulemaking and Order in CC Docket No. 02-6<sup>1</sup> (the “NPRM”). EdLiNC was formed to represent the viewpoint of public and private schools and libraries in the FCC proceedings concerning the implementation of the Telecommunications Act of 1996. The Coalition seeks to expand the use of educational technology and ensure that schools and libraries are aware and take advantage of the affordable rate, which is guaranteed to them in the Universal Service provisions of the Act. EdLiNC is a volunteer-based organization. Those members who are participating in this filing are identified at Exhibit A.

EdLiNC and its members are encouraged by the Commission’s decision to address the issues outlined in the NPRM, because the discounts for schools and libraries established by the Commission pursuant to Section 254(h) of the Communications Act (the “E-Rate” or “E-Rate discounts”) have proven to be an enormous benefit to America’s libraries. After five years, however, it is important that the Commission re-examine its rules to ensure that the original purpose and the full promise of Section 254(h) are being met.

### **I. THE E-RATE DISCOUNTS HAVE PROVEN THEIR VALUE TO AMERICA’S SCHOOLS AND LIBRARIES.**

In adopting the universal service provisions of the 1996 Telecommunications Act, Congress acknowledged the importance of providing the nation’s schools and libraries with

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<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism*, Notice of Proposed Rule Making and Order, CC Docket No. 02-6 (rel. Jan. 25, 2002).

modern telecommunications technology. The Conference Report on S. 652 stated, clearly and directly, the intent of Congress regarding universal service for schools and libraries:

The ability of K-12 classrooms, libraries and rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. The provisions of subsection (h) will help open new worlds of knowledge, learning and education to all Americans – rich and poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of an illness, to Americans everywhere via schools and libraries. This universal access will ensure that no one is barred from benefiting from the power of the Information Age . . . .

H.R. Conf. Rep. 458, 104th Cong., 2d Sess. (“Conf. Rep.”) at 132-133 (1996).

In the First Report and Order, *In re Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶¶ 44-55 (1997) (“First Order”), the Commission established the general principles of the Universal Service program, including competitive and technological neutrality. The First Order also established the groundwork for the schools and libraries program, outlining the program’s eligible services, discount methodology, funding mechanisms, and access to advanced communications. *See generally* First Order, Section X.

Of particular importance to schools and libraries was the Fourth Order, *In re Federal-State Joint Board on Universal Service*, Fourth Order in Reconsideration, 13 FCC Rcd. 5318 (1997) (“Fourth Order”). This Order looked at many issues, including concerns regarding the administrative burden of the reporting requirements, the ineligibility of state telecommunication networks and wide area networks, the restrictions on eligibility for internal connections, competitive bid requirements, and reimbursements. *See generally* Fourth Order at Section VI.

The NPRM revisits many of these issues, while also addressing new concerns. In attempting to improve the program, the Commission must remember the fundamental purpose of

the E-Rate discounts and ensure that other considerations do not inadvertently undermine the intent of Congress.

As technology has evolved in the five years since the Commission adopted the First Order, so have schools and libraries. With the help of the E-Rate, schools and libraries are now fully immersed in technology, and their operations and capabilities are changing dramatically. For example, the Delta View Joint Union School District in Hanford, California is a K-8 public school with just 89 students. The school is located in a very rural part of California, and accrues major expenses to get advanced technology for their classrooms. However, this district, solely through the help of E-Rate funding in Years 3, 4, and 5, has established an Internet connection in every one of its classrooms. To Delta View, E-Rate is considered “the great equalizer,” enabling affordable Internet connections and service in an area where non-discount prices are very high.

**II. THE FCC MUST NOT TAKE ANY STEPS THAT WOULD THREATEN THE OVERALL INTEGRITY OF THE E-RATE.**

EdLiNC would like to stress the necessity of ensuring the E-Rate program’s integrity. The NPRM raises two issues that go to the core of the program’s integrity. The proposals for treatment of unused funds, and the discounts for Internet access bundled with content, both raise the possibility that authorized funding will not be made available for its intended purpose, the first through reductions in the amount of such funding, the second through diversion of funding to inappropriate areas.

**A. FUNDS THAT ARE ALLOCATED IN ONE YEAR BUT NOT DISBURSED SHOULD BE ROLLED OVER AND MADE AVAILABLE TO APPLICANTS THE CURRENT FUNDING YEAR.**

Section III.E.3, ¶¶ 69-70, of the NPRM seeks comment on how unused funds should be treated. The current rule states that “all funding authority” that is not used in one year shall be



carried over to the current funding year. 47 C.F.R. § 54.501(a). The NPRM notes, however, that the rule is silent about treatment of unused funds. The NPRM suggests modifying this rule to either: (1) require that unused funds be credited back to contributors through reductions in the contribution factor; or (2) require the distribution of unused funds in subsequent years, in excess of the annual cap.

EdLiNC strongly believes that unused funds should be rolled over to the current funding year. EdLiNC supports Commissioner Copps's statement that there should be no ambiguity regarding this issue, and that the rules clearly indicate that such treatment is permissible. Despite any apparent ambiguity in the rule, this has always been EdLiNC's understanding of the rule. In fact, the reference to "funding authority" was clearly understood at the time to refer to the actual funds; the section is meaningless otherwise. A plain reading of the regulation supports Commissioner Copps's statement.

In addition, prior proceedings support the concept of rolling over funds. When the Commission adopted the Joint Board's recommendation that funding be capped at \$2.25 billion per year, the Commission also decided that if not all the funds were needed in the first year, unused funds could be rolled into the current funding year: "We also adopt the Joint Board's determination that, if the annual cap is not reached due to limited demand from eligible schools and libraries, the unspent funds will be available to support discounts for schools and libraries in subsequent years."<sup>2</sup> No discussion of section 54.507 in the Commission's proceedings support the interpretation and distinctions presented in this NPRM. Nowhere is there a distinction made between funds and funding authority, or the disparate treatment of committed and uncommitted

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<sup>2</sup> *First Report and Order* at ¶ 529.

funds, and there is no reason for the Commission to read that distinction into this or any other proceeding.

Section III.E.2, ¶¶ 67-68, of the NPRM points out that each year, a portion of the program funding is not used. While all funds are committed, the documentation is not always received in order to disburse all these funds to the successful applicants. In the first year, 82% of funds were disbursed, while in the second year this dropped to 71%. The NPRM seeks comment on program changes that can increase the percentage of committed funds being disbursed, and also seeks to develop a list of the reasons why applicants do not seek to receive all of their committed funding.

EdLiNC believes that any funds that are not used in one year should be rolled over and used in the current funding year in lieu of crediting these funds back to contributors. This is the easiest and most equitable way of ensuring that funds are used to provide services. Clearly, the demand for these funds exists. If anything, the Commission should consider raising the cap due to increased demands on the program. This issue strikes us a red herring: an excuse to indirectly lower the \$2.25 billion cap, even though the SLD's own demand estimate demonstrates very high need for E-Rate funding.

In any event, unused funds by no means reflect a decrease in need. Due to the lengthy application process, it is inevitable that not all committed funds will be disbursed. Many things can happen between the time of application and the time of disbursement. For instance, charges for services can decrease, or providers can go bankrupt. In addition, projected budgets might be cut, or proposed spending or construction based on bond referendums may not pass.

It is unlikely that the reasons that cause funds to go unused will disappear. As such, the program should accept that these variables exist, and ensure that funds are rolled over to the

following year and used to help as many schools and libraries as possible. The discrepancy between the amount authorized and the amount disbursed should by no means be used as an excuse to reduce the amount of funding collected or distributed.

**B. EdLiNC OPPOSES DISCOUNTS FOR INTERNET ACCESS BUNDLED WITH CONTENT.**

In section III.A.2, ¶¶ 23-25, of the NPRM, the Commission asks whether an applicant should receive discounts on the entire price of an Internet access service that includes a bundled content component, if that service is the most cost-effective service package available. EdLiNC opposes the use of any E-Rate support to pay for content of any kind.

E-Rate discounts should not be used to fund the purchase of content because the purpose of the E-Rate is to support and promote the extension of the nation's communications networks into schools and libraries. If the Commission were to allow full support for bundled services, the limited funds available to support telecommunications services and other permissible means of extending the existing network would be stretched even thinner. This reasoning was sound when adopted in the *First Report and Order*, and it is even more sound today, when the demand for discounts on all kinds of services has increased significantly.<sup>3</sup> Allowing discounts for access bundled with content creates a precedent for providing discounts for non-telecommunications services. This could lead to E-Rate support for a whole host of other worthwhile services, like professional development and hardware. These non-telecommunications services are important, but they are not within the realm of services that the E-Rate program was intended to support. In addition, allowing discounts on bundled service may encourage providers to insist on bundling service and refusing to provide unbundled service.

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<sup>3</sup> See *First Report and Order*, ¶¶ 444 – 447.

EdLiNC does support the Commission's current mechanism, implemented in the First Order at ¶ 447, where it made provisions for applicants who found that it is more cost-effective to purchase bundled Internet access. This mechanism provides a workable system for schools and libraries who do not have an unbundled option, or can receive substantial savings by purchasing bundled services. The current mechanism also ensures that applicants are not receiving discounts for content, while still providing them flexibility.

**III. EDLINC SUPPORTS CHANGES TO THE FCC'S RULES THAT WILL STRENGTHEN THE EDUCATIONAL PURPOSES OF THE E-RATE DISCOUNTS.**

EdLiNC believes that any changes made to the E-Rate must advance the E-Rate's educational purpose. While administrative efficiency is important, the goal of providing as many services as possible to schools and libraries is paramount. As such, EdLiNC supports adding eligible services, creating a flexible list of pre-approved services, maintaining the 30% benchmark, creating limited equipment transferability limits, and allowing payment method flexibility. Each of these options will help maintain the educational purposes of the program, and may provide the added benefits of easing administrative concerns and increasing overall efficiency.

**A. THE COMMISSION SHOULD MAKE WIRELESS SERVICES AND VOICEMAIL ELIGIBLE FOR E-RATE DISCOUNTS.**

In Section III.A.1, ¶¶ 15 – 22, the NPRM seeks comment regarding the definition of eligible services. Specifically, the NPRM asks whether Wide Area Networks, wireless services, and voice mail should be eligible for discounts.

Wireless services and voicemail should be included in the definition of eligible services for educational purposes only. The Commission has broad authority to determine the scope of

eligible services. Section 254(h)(2) directs the Commission “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.” These services are increasingly common-place in today’s technological society, but most importantly they are fundamentally telecommunications services: there is no logical argument for excluding them, particularly since e-mail is eligible for discounts.

Including wireless services also is consistent with the one of the stated goals of universal service, namely, technological neutrality. See *First Report and Order*, ¶ 49. As such, EdLiNC believes that wireless services that are the functional equivalent of wireline services should be included as eligible services.

**B. EDLiNC SUPPORTS THE USE OF AN APPROVED LIST OF SERVICES WITH RESPECT TO CERTAIN BASIC AND COMMONLY-USED SERVICES.**

Section III.A.1, ¶¶ 13-14, of the NPRM suggests establishing an online database of pre-approved products and services in order to improve the operation of the eligibility determination process. Currently, the SLD posts on its website a list of products and services, with their corresponding eligibility. This approach gives applicants some guidance regarding whether a requested service is eligible, but simply because an item appears on the list does not mean an application will be approved. This creates uncertainty for applicants, which in turn makes planning and budgeting more difficult. In addition, while applicants are asked for a great deal of information, it appears that much of this information is not considered in the approval process, particularly for more routine or typical applicants. On the other hand, the potential for a case-by-case review allows applicants to explain to the SLD why their specific application is eligible, which is especially important when processing applications for new or innovative services.

EdLiNC supports the use of a list of eligible products and services, provided that the list is prepared and used correctly, and the application process still allows for innovation and flexibility. If implemented incorrectly, relying on an eligible services list could stifle innovation.

We believe that the SLD has substantial experience at this point in determining what kinds of services are most commonly requested by applicants and most commonly approved for discounts. Accordingly, we believe it should be possible to establish a list of approved services, which could be subject to minimal review by the SLD staff. These services should be those about whose eligibility there is no debate; we believe that all services that involve the simple transmission of telecommunications, as well as Internet access that is provided on an entirely unbundled basis, should qualify for discounts and should be approved using a streamlined application process.

In general, the application process should be based on four principles: transparency, consistency, flexibility and generality. First, all funding decisions should be transparent, so that all applicants can learn from the experiences of others. Applicants should have access to the same eligibility criteria as the application reviewers have. Second, all decisions should be based on consistently and logically applied principles, so that applicants can understand and learn from the rationale supporting a decision to deny or extend discounts to a particular service. Third, decisions should not be narrowly tied to what has been approved in the past, but should be open to the eligibility of new services that otherwise meet the FCC's criteria for eligibility. This will allow new technologies and new services to be treated equitably. Finally, decisions must be justified on the basis of general characteristics, rather than simply stating that a specific service or item of equipment is eligible. Too often the current approach gives no guidance to future applicants who may be considering applying for discounts for a wide range of equipment and

services. This is consistent with the one of the stated goals of universal service, namely, technological neutrality. *See* First Report and Order, ¶ 49.

Consistent with these principles, if a service is on the list, there should be no doubt about its eligibility. Conversely, there must also be mechanisms for expanding the list and for funding innovative applications. EdLiNC recommends that a "Checklist of Eligible Services" be added to the online application and that there be an "Other Eligible Service" option made available at the end of the checklist, which applicants could use to identify services or equipment that they are requesting but that are on the eligible services checklist. This option would allow applicants to request discounts for products or services that do not appear on the eligible services checklist. At the same time, this option would also provide an efficient mechanism for the Administrator to learn of new products and services that should be considered for inclusion.

An applicant using this option would need to understand that inclusion of products or services in this category does not imply eligibility and that eligibility of the product or service will be dependent upon SLD review, which may delay application approval. Some sort of explanation on the form or accompanying instructions would be needed, to make this clear. Through this mechanism, we believe that: (1) new products and services can be continually brought to the attention of the SLD; (2) once a determination has been made by the SLD, subsequent applications including the same product or service can be easily and quickly approved or denied; and (3) the need for periodic Notices of Inquiry, in order to determine new eligible products or services, can be avoided. Another way to allow for expansion of the list might be to require the FCC staff, such as the Office of Engineering and Technology, perhaps, to periodically review the types of services available in the marketplace and to update the basic service list accordingly.

EdLiNC suggests that basic, commonly-used services that involve the provision of transmission services or connections to external networks should appear on such a pre-approved, published list, and that the application process for these services should be streamlined. If an applicant is making a request for an approved transmission and connectivity service such as local telephone service, it should be provided a pared-down application form that will save both the applicant and the reviewer substantial resources. Another potential improvement to the application process would be to establish a simplified procedure for applicants reapplying for previously approved listed services. The importance of ease of application, especially for small entities, cannot be stressed enough.

In order to further streamline the process, there should also be a mechanism for adding new services to the pre-approved list before applications are due. Such a mechanism would allow an applicant or a provider to nominate a service for eligibility prior to the application process. The SLD, with the help of the FCC technology staff, could determine if the service should be added to the list before the applicant requests it. This would lessen the burden of the appeals process for both the applicant and the program because rather than being turned down after applying, and perhaps after committing other resources towards the purchase of a service, an applicant would know that the request would not be approved even before it formally applied.

**C. EDLiNC SUPPORTS THE CURRENT RATIO RESTRICTIONS FOR REVIEW OF REQUESTS CONTAINING INELIGIBLE SERVICES.**

Section III.A.3, ¶¶ 26-27, of the NPRM discusses the review process for requests containing ineligible services. Currently, the Administrator only reviews funding requests where 70% or more of the services requested are considered eligible services. If 30% or more of the services are ineligible, the funding request is denied in its entirety. The NPRM seeks comment on the benefits and burdens of this procedure.



EdLiNC understands the administrative efficiency of this practice, and as such does not object to maintaining this rule. Yet, we recommend that a statement be added to the online application which alerts applicants to this rule and strongly encourages applicants to request bidders to break out E-Rate eligible costs from E-Rate ineligible costs during the bidding process, thus relieving school and library applicants of this burden. SLD oversight of eligibility compliance will still be required, but the potential for ineligible products or services exceeding 30% of the total should be greatly diminished.

**D. EDLiNC SUPPORTS THE PROPOSED RESTRICTIONS ON TRANSFERS OF EQUIPMENT, PROVIDED THAT EXCEPTIONS ARE PERMITTED FOR CASES OF DEMONSTRABLE NEED.**

Section III.B.2, ¶¶ 37-40, of the NPRM points out a potential loophole in the eligibility rules. While discounted services cannot be sold, resold, or transferred, there is nothing to stop an eligible entity from transferring equipment purchased with the benefit of E-Rate discounts between locations within a district, and requesting the same services and equipment in the next year.

In principle, EdLiNC is sympathetic to this concern, as such a practice might constitute an evasion of the FCC's rules, and would certainly reduce the amount of funding available for other eligible entities. Although it is not clear that this practice is actually a problem, because there is no data available to establish the frequency of such activity, EdLiNC does support closing such loopholes. Given the rate of technical obsolescence, a two- or three-year moratorium on transferring equipment would seem sufficient to curb this problem. Yet, any such change should provide flexibility for those entities that have a bona fide need and are not trying to take advantage of the loophole. For example, such a rule would have to provide for such

exceptions as destruction by fire, flood, or similar catastrophe, or because of a malfunction of the equipment itself that requires replacement.

**IV. EDLINC SUPPORTS ADDITIONAL MEASURES FOR ENCOURAGING COMPLIANCE WITH THE FCC'S RULES, PROVIDED THAT SUCH MEASURES ARE FAIR AND BALANCED**

EdLiNC agrees with the Commission desire to reduce “waste, fraud and abuse,” and can support measures to advance that goal. But such measures as barring noncompliant entities from the program must be carefully considered and applied only in cases of clear and deliberate noncompliance. Reduction of “waste, fraud and abuse” should not be misused as a means of limiting the scope and value of the E-Rate.

**A. FAIRLY CONDUCTED AND PROPERLY FUNDED INDEPENDENT AUDITS WOULD ENHANCE PROGRAM INTEGRITY, BUT AN AUDIT REQUIREMENT SHOULD TAKE INTO ACCOUNT ESTABLISHED AUDIT REQUIREMENTS.**

Section III.D.1, ¶¶ 58-59, of the NPRM seeks comment on whether the Administrator should be authorized to require independent audits of recipients and service providers, if the Administrator has reason to suspect that serious problems exist. These audits would be conducted at the expense of the audited entities. EdLiNC strongly supports reasonable accountability measures, but requiring audited entities – particularly those found innocent of any error or wrongdoing – to pay for audits is entirely unreasonable.

Under § 54.705(a)(1) of the Commission’s rules, the SLD already has the authority to audit the beneficiaries of this program. We see no need for additional authority to be granted, particularly because there is no evidence of any significant problem with the current system that would be resolved through the use of audits. On the other hand, because of the complexity of the E-Rate application process and the diversity of eligible services and equipment, there is a high probability of inadvertent errors and improper, but well-intentioned, practices on the part of E-

Rate applicants. Therefore, while we can understand that if the Administrator became aware of potentially serious problems or suspected malfeasance on the part of applicants or service providers, the Administrator would want to conduct an independent audit, it is far more likely that errors will be minor and unintentional.

Consequently, we do not believe regular, unwarranted audits are necessary or appropriate. Schools and libraries are already audited as a matter of course. As government entities, schools and libraries must account for the source and distribution of all funds they receive on at least an annual basis. Accordingly, any audit scheme should take into account a community's existing audit mechanism. Any audit requirements must be very clear about what documents need to be retained by applicants. In addition, audits should only be conducted in the most serious of circumstances, and the Commission should establish what these circumstances would be.

EdLiNC cannot support the proposed funding mechanism, especially since there is no evidence of any significant problem regarding how schools and libraries use Universal Service funding. After all, applications are received and approved by the SLD, and funds are not spent directly by the applicant – all the applicant receives is a discounted rate on services.

Consequently, there is little opportunity for abuse of the program. In addition, an audit requirement would deter schools and libraries from applying for discounts, particularly the smaller and poorer entities who most need the discounts. Instead of receiving much needed discounts, an inexperienced or inexpert applicant could end up paying more for an audit than it received in discounts. This kind of chilling effect would seriously harm the program and goes entirely against the goals of Section 254(h). A much fairer and more reasonable option would be

to pay for audits out of the universal service fund, or only require an applicant to pay for the audit if the applicant is found to have knowingly violated the program rules.

**B. SUBJECT TO REASONABLE SAFEGUARDS, THE PROPOSED BAR FOR WILLFUL OR REPEATED NONCOMPLIANCE WOULD INCREASE PROGRAM INTEGRITY.**

As noted in Section III.D.2, ¶¶ 60-62 of the NPRM, the Commission can bring forfeiture proceedings against entities who willfully or knowingly fail to comply with a material provision the FCC's rules.<sup>4</sup> The rules, however, do not permit the Commission to suspend or entirely bar entities from participating in the program.

EdLiNC would support a temporary bar or suspension in the most egregious cases, provided that the standard is not so strict as to punish inadvertent or harmless errors. In addition, any such temporary bar or suspension should apply equally to providers, consultants, and applicants. For example, providers who collect funds in excess of the amounts properly due for services provided should be sanctioned at least as severely as schools and libraries. After all, telecommunications providers have large staffs for dealing with such matters as processing E-Rate related documents and they are in day-to-day contact with the SLD and the Administrator. Most schools and libraries – especially smaller ones – are not nearly as knowledgeable about the FCC's rules or the SLD's procedures because they handle only their own requests, compared to the hundreds of thousands of transactions a provider's staff will process in a single year.

EdLiNC believes that any bar or suspension should be limited to cases of material noncompliance, and any such rule must include a right of appeal to the Commission. EdLiNC also believes that any such rule should not hurt schools and libraries that have detrimentally

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<sup>4</sup> 47 U.S.C. § 503(b)(1)(B).

relied on the advice of paid consultants. In these instances, it is the consultant that should be barred or suspended.

**V. EDLINC SUPPORTS RULES THAT STREAMLINE THE APPEALS PROCEDURE.**

Section III.C.1, ¶¶ 48-52, of the NPRM addresses the current appeals procedure. 47 C.F.R. § 54.702(a) requires that an appeal of a decision by the SLD be received at the Commission within 30 days of the decision. Because of recent disruptions in mail service, that period has been extended to 60 days.<sup>5</sup> As noted in the NPRM, approximately 22% of all appeals are dismissed for being late-filed. The NPRM seeks comment on extending the 30-day limit, and tying the due date to the date an appeal is post-marked rather than mailed.

EdLiNC strongly believes that a longer time is needed for appeal. We recommend making the temporary 60-day time-frame a permanent change. Due to the myriad of staffing situations in the nation's schools and libraries, it is unreasonable to expect these entities to receive a decision, review the decision, mount an argument against denial, obtain the necessary documentation for an appeal, draft an appeal, and get it to the Commission within 30 days. As the statistics clearly show, 30 days is not sufficient.

In addition, EdLiNC supports a rule that ties the due date to the post-marked date. While this departs from general Commission practice, it is consistent with other aspects of the SLD's practices. Further, it is more equitable to isolated communities that may need to build in extra mail time, or use much-needed funds to pay for an express shipping service that guarantees delivery.

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<sup>5</sup> See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order (2001).

On a related matter, EdLiNC would like to applaud the Commission for reducing the backlog of appeals. Appeals of funding decisions can greatly affect the applicant's ability to budget for and provide services each year. As such, the Commission's efforts to respond in a timely fashion to the appeals of schools and libraries is to be commended.

**VI. EDLINC SUPPORTS APPLICANT CHOICE REGARDING PAYMENT METHODS.**

In Section III.B.1, ¶¶ 33-34, the NPRM discusses whether service providers should be required to give applicants a choice regarding payment methods. Existing practice provides for two payment methods: Either the applicant pays the provider the full cost, and receives reimbursement for discounted services from the service provider after it has received reimbursement from the Administrator through the BEAR plan, or the applicant pays only the non-discounted portion, and the provider seeks reimbursement for the discounted portion. Some providers, however, have insisted on receiving full payment from the eligible entity as a condition of providing service. The rules do not specify that service providers cannot insist on one form of payment over another.

EdLiNC supports applicant choice in payment methods. Schools and libraries are governmental entities, and generally must conform to very specific budgetary and funding processes. The preferred payment method may depend on the specific funding and budget practices in a locality. It would be helpful if the rules accounted for such differences, and gave schools and libraries the option to choose a payment method that best fit local practices. Accordingly, we support the proposal to prevent service providers from attempting to impose a payment method on an applicant.

EdLiNC also supports maintaining an exception to this rule for smaller providers who do not have the flexibility of more established providers. As such, participating service providers should, as part of the SPIN application process, be required to alert SLD as to whether they will discount services on bills, provide reimbursement through the BEAR process, or provide the option of either method to the E-Rate applicant. This information should be provided on the SLD website and made available to applicants during the Form 470 filing process. As part of filing Form 486, applicants should identify the process or options provided by the service provider for discounted payment or reimbursement and indicate the process they elect to use. This will have several positive effects: (1) It will eliminate the need for contact between service providers and applicants to determine the process chosen by the applicant; (2) it will encourage, but not require, service providers to make both options available to applicants, in that service providers NOT allowing the option will be at a perceived disadvantage in the marketplace; (3) it will allow applicants to select bids with prior knowledge of the reimbursement or payment options allowed by the bidding service provider; and (4) it will place the fewest constraints on both applicants and service providers.

### **CONCLUSION**

The E-Rate discounts have undeniably provided much-needed assistance to schools and libraries around the country. EdLiNC applauds the Commission for its dedication to the careful implementation of Section 254(h) and its willingness to make further improvements. EdLiNC supports the Commission's efforts to improve the program, and urges the Commission to avoid changes that would impose unnecessary, ineffective, or duplicative regulation on schools and

libraries. Finally, EdLiNC respectfully requests that the Commission consider additional changes needed to ensure the equitable and efficient allocation of funds.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew C. Ames", written over a horizontal line.

~~Matthew C. Ames~~

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## **Exhibit A**

### **The Members of EdLiNC Participating in this Filing:**

American Association of School Administrators  
American Library Association  
Association of Educational Service Agencies  
Consortium for School Networking  
International Society for Technology in Education  
National Association of Independent Schools  
National Catholic Education Association  
National Education Association  
National Education Knowledge Industry Association  
National Rural Education Association  
National School Boards Association  
Rural Schools and Community Trust  
United States Conference of Catholic Bishops