

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter Of)	CC Docket No. 02-6
Schools and Libraries Universal Service)	
Support Mechanism)	GN Docket No. 09-51
A National Broadband Plan)	
For Our Future)	

**COMMENTS OF THE EDUCATION & LIBRARIES
NETWORKS COALITION**

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COMMENTS OF THE EDUCATION AND LIBRARIES NETWORKS COALITION

The Education and Library Networks Coalition (“EdLiNC”) respectfully submits these comments in response to the Commission's recent Notice of Proposed Rulemaking regarding the E-rate program. *See In the Matter of Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, FCC 10-83 (rel. May 20, 2010) (“*Notice*”). The *Notice* details in stark terms how inadequate funding jeopardizes the E-rate program’s mission. EdLiNC accordingly urges the Commission to raise the current \$2.25 billion funding cap to meet the more than \$4 billion in annual demand for its current support. The Commission’s proposal to index the funding cap to inflation amounts to a positive first step, but it does not solve the underlying problem of inadequate funding. The Commission also should refrain from adopting proposals that inevitably will drain all too precious program funding or that will significantly disadvantage the rural and urban constituencies that this program was designed to serve. Finally, EdLiNC sets forth its views on a variety of other matters raised in the *Notice*.

INTRODUCTION AND SUMMARY

EdLiNC, an organization comprised of the leading public and private education associations and the American Library Association,¹ consistently has advocated on behalf of the effective implementation of the E-rate program since the program's inception in the late 1990s. In keeping with its mission to protect and improve the E-rate program, EdLiNC has participated in every Commission rulemaking proceeding regarding E-rate matters. The direct experience of EdLiNC's diverse member associations in the ongoing effort to provide schools and libraries with affordable access to telecommunications and information services has informed EdLiNC's views regarding the E-rate program over the years. Indeed, EdLiNC submits that its member associations' frontline role in implementing the E-rate program provides a practical, real-world perspective regarding the program's current operations and future requirements.

EdLiNC believes that the crucial issue that the Commission should address in this proceeding is the \$2.25 billion funding cap on the E-rate program. The *Notice* clearly documents the dire funding shortfalls for priority two services that result from the current funding structure. The *Notice* “seeks comment on how to provide stability and certainty for the funding of internal connections that are necessary to deliver higher bandwidth services to the classroom and how to expand access to funding for internal connections for schools and libraries serving impoverished populations.” See *Notice* at ¶7. The answer to this question, which is of overarching importance to the E-rate program, is to raise the current \$2.25 funding

¹ EdLiNC's members include the American Association of School Administrators, American Library Association, Association of Educational Service Agencies, Consortium for School Networking, Council of Chief State School Officers, International Society for Technology in Education, National Association of Elementary School Principals, National Association of Independent Schools, National Association of Secondary School Principals, National Catholic Educational Association, National Education Association, National Rural Education Association Coalition, National Schools Boards Association and United States Conference of Catholic Bishops. EdLiNC's website, located at www.edlink.org, contains additional information regarding the organization.

cap to meet the demonstrated need of eligible applicants who, collectively, seek approximately \$4 billion in support from the program each year. The Commission's proposal to index the funding cap to inflation is a positive one, but indexing only will ameliorate, not solve, the critical problem of inadequate program funding within the current constructs of the program.

EdLiNC sets forth below its comments in response to many of the Commission's specific proposals on expanding the reach of broadband to the classroom, providing greater flexibility to select broadband services, and streamlining the application process. EdLiNC understandably analyzes these proposals for their potential effects on program funding. EdLiNC opposes any and all proposals, regardless of their merits, that will siphon-off program funds.

I. The Commission Must Use This Opportunity to Address the Underlying Problem of Inadequate Funding for the E-Rate Program

A. The E-Rate Program's Inadequate Funding Cap Violates the Statutory Requirement of a "Sufficient" Funding Mechanism to Preserve and Advance Universal Service and Must Be Raised

The Telecommunications Act of 1996 required the Federal-State Joint Board on Universal Service ("Joint Board") to create "specific, predictable and sufficient...mechanisms to preserve and enhance universal service." See 47 U.S.C. §254(b)(5). Indeed, the Commission expressly acknowledged this statutory "obligation" when it set the E-rate program funding cap at \$2.25 billion. See *Federal-State Joint Board on Universal Service*, 12 FCC Rcd. 8776 (1997) ("*Universal Service Report and Order*"), at ¶530. However, the \$2.25 billion funding cap, which resulted from an old and very limited analysis performed by the Commission over a dozen years ago, has proved entirely insufficient as technology has evolved.

When the Commission adopted the Joint Board's recommendation of a \$2.25 billion funding cap, it noted that the funding cap was not based on any existing similar program with historic funding data. *See Universal Service Report and Order* at ¶530. Instead, the Commission relied on various data sources to “*estimate* the cost of providing support to schools and libraries.” *Id.* (emphasis added). However, the Commission recognized that the “utility of these reports is limited insofar as they attempt to estimate costs in an area where technologies are developing rapidly and demand is inherently difficult to predict.” *Id.*

Years of experience in implementing the E-rate program have demonstrated that the Commission's reservations regarding the validity of the funding cap that it set in 1997 were prescient. With each passing year, it becomes clear that the Commission's “estimate of costs” for the program falls far short of actual demand and that the Commission needs to revise it significantly. In fact, the current demand figures are likely to be underestimated. Many schools and libraries do not apply for priority two services because they know they are unlikely to be funded given the lack of overall funding. The *Notice* itself provides ample documentation of the inadequacy of the funding cap:

- “[D]emand for funding far exceeds available funding every year.”
- “This year...approximately \$2 billion alone was requested for telecommunications and internet access, leaving very little funding available for the internal connections that are necessary to bring higher bandwidth connectivity from a single location in the school to the classroom.”
- “It is likely this year that only school districts with nearly 75 percent of students eligible to receive free or reduced price lunch will receive any funding for internal connections.”
- “In future years...it is likely that requests for telecommunications and internet access services will exceed the cap, with the result that no funding for internal connections will be available for any applicants.”

- “[M]any requests for priority two services are denied, and over the years, the vast majority of requests for internal connections have gone unfunded.”

See Notice at ¶¶7, 62. In short, an inaccurate and thus far unchanged E-rate funding estimate from more than 12 years ago has led to a generalized funding crisis for the entire program and led the program closer to the brink of eliminating critical priority two services. EdLiNC strongly urges the Commission to raise the funding cap to address the systemic weaknesses in the program’s funding regime and to meet the demonstrated need of the program’s constituents.

B. Indexing the Annual Funding Cap to Inflation Would Ameliorate, But Not Solve, the Fundamental Problem of Inadequate Funding for the E-Rate Program

The Notice seeks comment regarding a helpful proposal to index the E-rate funding cap to inflation. Specifically, the Commission proposes to: (1) amend section 54.507 of the Rules to index the E-rate program funding cap prospectively to the rate of inflation so that the program maintains its current purchasing power in 2010 dollars; (2) maintain the funding cap at the previous funding year's level to foster stability during periods of deflation; and (3) use the quarterly gross domestic product chain-type price index. *See Notice* at ¶¶84, 85. The Commission estimates that implementation of its indexing proposal “could” result in an increase of the program funding cap to \$2.55 billion over the next five years if historic inflation rates over the last five years continue to prevail. *Id.*

EdLiNC welcomes the FCC indexing proposal as a positive step that apparently would enhance program funding. However, the proposal clearly will not address the fundamental problem of inadequate program funding on a going-forward basis. Nor will indexing replenish the program fund to account for historic underfunding. For example, according to the

National Broadband Plan (“NBP”), the E-rate program's purchasing power has fallen by about \$676 million in inflation-adjusted dollars since the program's inception. *See* National Broadband Plan at 238 n.110. The Commission’s proposal in the *Notice* does not even attempt to address recouping this staggering loss of purchasing power. Indeed, even if the Commission’s proposed incremental inflationary adjustment proposal gains approval, it could take several years before the program reaches a funding level required to meet the demonstrated needs of America’s public and private K12 schools and public libraries. We submit that the proposed additional program funding produced by indexing would be inadequate, resulting in the proverbial “drop in the bucket” rather than a sustainable funding stream.

II. EdLiNC Supports the Commission's Goal of Expanding the Reach of Broadband to the Classroom, but Generally Opposes its Proposals for Achieving it

As a preliminary matter, EdLiNC supports the Commission’s goal of expanding the reach of broadband to the classroom. EdLiNC cautions the Commission, however, against adopting proposals that would adversely affect program participants.

Under the E-rate program's current priority funding rules, funding requests for all eligible services, other than internal connections and basic maintenance for internal connections, receive first priority for funding. Any remaining funds are allocated to requests for support for priority two services--internal connections and basic maintenance of internal connections--beginning with the most economically disadvantaged schools and libraries as determined by the schools and libraries discount matrix. *See* 47 C.F.R. §§54.507(g)(1)(i) & (ii); 47 C.F.R. §54.505(c); *Notice* at ¶60.

The Commission correctly identifies the key unintended consequences of the current funding system:

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. 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.

See Notice at ¶67. In light of these unintended consequences, EdLiNC strongly supports the “important” goals for this proceeding identified by the Commission: (1) providing funding for internal connections to more schools and libraries than in the past; and (2) ensuring a predictable amount of funding available to schools and libraries for internal connections each year. *See Notice* at ¶68.

But our solution - raising the program’s cap to meet demonstrated need - is far different than the various solutions proposed by the Commission. Indeed, we contend that raising the program’s cap to meet annual demand would obviate the need for virtually all of the proposed changes to the program’s funding structure submitted by the Commission.

The Commission advances the following specific proposals to address the funding shortfall for priority two services, including: (1) per student funding caps/minimum funding amounts; (2) internal connection set-asides; (3) priority two funding thresholds; (4) revised discount matrix; (5) elimination of the 2-in-5 rule; (6) school district-based applications; and (7) elimination of funding for basic maintenance of internal connections. *See Notice* at ¶¶71-83. EdLiNC generally opposes these proposals because they do not address the E-rate program's principal problem—insufficient funding. EdLiNC notes its specific objections to some of these proposals below.

Per Student/Per District Caps. The FCC seeks comment regarding the establishment of a “flat per student cap per school district for each funding year, with the applicant's discount

rate applied after the cap is determined.” Libraries would receive the same discount as the public school districts in which they are located. *Notice* at ¶71. EdLiNC opposes per-student based funding because such a mechanism ignores high cost of service factors prevalent in rural and outlying areas. Awarding E-rate support based on student population would cause significant harm to the numerous small and rural school districts who, because of location and geography, are subject to disproportionately higher connectivity costs.

Revised Discount Matrix. The Commission cites the State E-rate Coordinators Alliance and “other commenters” that have supported altering the discount rate as an “effective way to increase the availability of priority two funds and more evenly distribute” such funds to a greater number of entities. *Notice* at ¶76. The Commission further notes that “other governmental programs that award funding for similar purposes require participants to pay 15 or 20 percent of the total cost.” *Id.* The Commission seeks comment regarding a revised discount matrix for priority two services and whether the Commission should adjust the discount provided to rural schools and libraries. *Id.*

EdLiNC’s thinking and its commitment to preserving support for the lowest income applicants has not changed on this matter since we last filed comments on a nearly identical proposal more than six years ago. What we said then is even truer today in light of the terrible economic conditions gripping the nation: “EdLiNC remains committed to ensuring that the most disadvantaged applicants are adequately and equitably served by the program. We have strong reservations about any proposed reform that would undermine the program’s commitment to connecting the poorest rural and urban schools and libraries in the country.”²

² EdLiNC Comments in the Matter of Schools and Libraries Universal Service Support Mechanism, Further Notice of Proposed Rulemaking; CC Docket No. 02-6; FCC 03-323; March 2004.

EdLiNC objects to this latest iteration of a proposal to revise the discount matrix because it would increase the burden on E-rate's lowest income applicants by raising the undiscounted costs of priority two services between 50% and 100%. While we understand and support the goal of making priority two services more widely available, EdLiNC simply cannot support driving down the priority two funding level on the backs of schools and libraries already suffering during this protracted economic downturn.

In cash-strapped and deficit-ridden California, for example, a further increase in undiscounted costs would prove devastating. Last year, Los Angeles Unified applied for priority two funding for 26 schools eligible for 90 percent discounts, seeking a total of \$20.48 million. While the district's share of those costs equaled over \$2 million then, its share would leap to more than \$3 million if the Commission increased its non-discounted share to 15% and more than \$4 million if increased to 20%. While larger districts such as Los Angeles Unified would likely have to cut back on their E-Rate applications for its most disadvantaged schools if the Commission opted to adjust the discount matrix, we fear that many smaller, low-income schools and libraries would simply be unable to participate in the program should their undiscounted service costs escalate significantly. While schools across America are laying off teachers and education support personnel, now is not the time to be asking these same schools to pay more.

III. Many of the Commission's Proposals to Provide Greater Flexibility to Select Broadband Services Would Consume Scarce Program Funding and Would Be Difficult to Implement

In order to "improve the efficiency" of the E-rate program, the NBP recommended that: (1) the E-rate program support online learning by providing wireless connectivity to portable devices so students can engage in learning while not in school; and (2) the

Commission give schools and libraries more flexibility to purchase the lowest-cost broadband solutions. *See* NBP Recommendations 11.23 and 11.17; *Notice* at ¶43. Consistent with these NBP recommendations, the Commission proposes to support wireless Internet access even when a portable device is used off school property; provide greater flexibility to use low cost fiber for broadband connectivity; and to target support for broadband services. *See Notice* at ¶¶45-54; 58-59.

EdLiNC of course supports the NBP goal of improving the efficiency of the E-rate program. Further, EdLiNC supports the Commission's specific proposal to encourage the use of low cost fiber connectivity. However, EdLiNC anticipates that most of the FCC's proposals will drain scarce program funds and raise a host of implementation and compliance difficulties. *Wireless Services Outside of School.*

(a) Funding Matters. As an initial matter, EdLiNC feels it important to note that its members strongly support the concept of home access to the Internet for educational programming services and believe that 24/7 access to educational content is critical to the future of learning. We are deeply impressed by the Maine Learning with Laptops program, which the *Notice* cites, and note that research demonstrates the benefits to student achievement of computers available for home use. A 2006 study by the Organization for Economic Cooperation and Development (OECD) found: "There is a stronger correlation between educational performance and frequency of computer use at home than at school. In a large majority of countries, the benefits of greater computer use tend to be larger at home than at school. In every country, students reporting 'rare' or 'no use' of computers at home score

lower than their counterparts who report frequent use.”³ However, we remain deeply concerned by the possible cost and legal ramifications posed by the Commission’s proposal to allow Internet access support for computing devices used off of school grounds.

In the *Notice*, the Commission proposes to support, as a priority one service, Internet access for “portable learning devices that are used off premises.” *Notice* at Paragraph 45. The *Notice* does not propose to support the purchase of mobile broadband cards, smartphones or e-books. *Notice* at ¶48. Although the Commission wisely excludes equipment support from the proposal, EdLiNC fears that E-rate support for this previously ineligible service may immediately, and certainly eventually, constitute a major drain on program funding. The *Notice* provides a preview of what the future may hold if the Commission supports wireless access outside the school. Specifically, the *Notice* cites “one 2008 survey” indicating that more than 27 percent of school districts at that time were implementing pilot programs involving Internet connected wireless devices for use in school and at home. *Notice* at ¶51. EdLiNC believes that more schools may be incented to implement such programs if the Commission decides to use E-rate to support Internet access service outside of school. Further, as a priority one service, any funding for off-premises internet access service will further jeopardize the already inadequate resources available to support priority two services. Although EdLiNC recognizes and supports the concept of anywhere/anytime learning underlying this proposal, the Commission simply should not designate this service for E-rate support without increasing the program’s funding cap. Finally, the Commission should consider proposals to expand Internet access to student homes through the High Cost or Low Income Funds, which have historically focused on residential connectivity.

³ Organization for Economic Cooperation and Development, *Educational Research and Innovation: Are the New Millennium Learners Making the Grade? Technology Use and Educational Performance in PISA 2006*, at 13.

(b) Implementation Considerations. With regard to the Wireless Services Outside of School proposal, the Commission notes that the Children's Internet Protection Act ("CIPA") requirements still would apply to services being used off-premises, and that schools and libraries must certify that services obtained through the E-rate program will be used solely for educational purposes. Consequently, the Commission seeks comment on: (1) the safeguards that it should impose to reduce the risk of unsupervised, non-educational use at home; (2) potential requirements on funding recipients to reduce the risk that E-rate funded wireless connectivity is not used for educational purposes off-premises; and (3) whether non-student household members may use E-rate connectivity. *Notice* at ¶¶49-50.

EdLiNC believes that E-rate support of off-premises Internet access raises major legal and practical ramifications which the Commission may not have considered fully. First, EdLiNC believes that enforcement of CIPA and educational use requirements simply would be impractical outside the school. Second, implementation of the Commission's proposal probably would require a significant revision of the current statutory framework governing online activities. Specifically, EdLiNC believes that federal statutes would have to be amended to prevent schools from being held responsible for a broad range of activities such as CIPA violations, illegal or negligent distribution of E-rate supported devices, copyright infringement, child pornography dissemination and cyberbullying activities. It will be next to impossible for schools to monitor who is using the laptop device at home and ensure that it is only being used for educational purposes. Third, off-premises device use likely will place additional and costly administrative burdens on schools such as the creation and collection of various parental consent forms and the auditing of home usage through home visits or technology monitoring. Finally, from a technology perspective, schools may lack adequate bandwidth to support both

off-premises and in-school Internet access. This would especially be true for schools that operate during non-traditional hours, support adult learning activities in the evening or have robust afterschool programming that relies on internet access.

Targeting Support for Broadband Services. The Commission seeks comment on a number of proposals designed to “reallocate funding so that finite amounts of E-rate dollars can be better targeted to satisfy the educational needs of students and library patrons.” *Notice* at ¶58. Noting that the demand for wireless services and increased bandwidth for broadband likely will increase, the Commission asks whether there are specific telecommunications services, Internet access services, or priority two services on the current eligible services list that should receive lower priority so that the Commission may allocate funding toward higher bandwidth connectivity. *Notice* at ¶59. EdLiNC opposes these “targeting” proposals. EdLiNC believes that such proposals inevitably will lead to the rationing or elimination of priority one services, thereby causing financially struggling schools to lose guaranteed funding for critical priority one services such as POTS. EdLiNC believes that priority one services are a basic tenet of the 1996 Telecommunications Act and must be preserved. Especially given the economic downturn, schools and libraries cannot afford to pay increased costs for their basic connectivity.

Expanded Access to Low Cost Fiber. The Commission proposes to permit program recipients to receive support for the lease of low cost dark fiber from non-telecommunications carrier third parties, such as municipalities and community or anchor institutions. *Notice* at ¶¶52-54. EdLiNC believes the use of dark fiber will enable participants to realize significant cost savings. The Tri-County Educational Service Center located in Wooster, Ohio, which serves over 30,000 students in 19 school districts across three Central Ohio counties,

responded enthusiastically to the prospect of dark fiber becoming an eligible service again, stating: “The use of dark fiber for our ESA provides for substantially greater bandwidth compared to telco services. We have been able to obtain cost savings of 50% over traditional carrier services while receiving a 750% increase in network performance. Reliability and stability of the network cannot be compared with the traditional carrier services. Dark fiber services also provide for planning of network growth based upon bandwidth need rather than cost.”⁴ Accordingly, EdLiNC supports the Commission’s proposal to classify leased dark fiber from any source as an eligible priority one service.

IV. EdLiNC Supports Many of the Commission’s Streamlining Proposals

The *Notice* sets forth a comprehensive group of proposals designed to streamline the E-rate program application process. EdLiNC historically has supported previous Commission proposals to streamline the program’s application process and to enhance the program’s efficiency generally. *See, e.g.* EdLiNC Comments, CC Docket No. 02-6. As noted below, with some important exceptions, EdLiNC supports many of the Commission’s specific streamlining proposals.

Technology Plans. The Commission proposes to eliminate E-rate technology plan requirements for priority one applicants that are otherwise subject to state and local technology planning requirements. It seeks comment regarding whether separate E-rate technology plan requirements remain useful for larger priority one funding requests, such as those exceeding \$1 million, even for applicants subject to state and local technology planning requirements.

Notice at ¶¶18-20.

⁴ AASA/AESA Ex Parte Filing in the Matter of: Broadband Needs in Education NPB Public Notice #15; GN Docket Nos. 09-47, 09-51, 09-137; CC Docket No. 02-6; WC Docket No. 05-195; February 2010

EdLiNC values education technology planning as it is well aware of the importance that schools and districts take into account, and are well-prepared to handle financially, the needs and costs for implementing technology-based programs. With that said, we see a great deal of merit in the Commission's proposal to eliminate planning requirements for priority one service applications. We do believe it unnecessary for those applicants seeking support for largely recurring telephone or Internet access services to continue to have to fulfill all of the paperwork requirements as those applicants seeking more expensive and more complicated priority two services. Moreover, there seems little reason to continue to mandate a planning requirement that duplicates technology planning efforts that most applicants are already required to undertake to receive their formula distributions from the Enhancing Education Through Technology program (Title II, Part D of the Elementary and Secondary Education Act).

However, EdLiNC cannot support proposals to set an arbitrary cut-off figure that would trigger a technology plan requirement. Requiring some applicants to develop plans and others not to do so would cause unnecessary confusion in the applicant community and E-rate funding commitment delays. EdLiNC believes that eliminating the technology plan requirement altogether for priority one applications will benefit school districts by reducing paperwork and saving the time and effort involved in the technology plan preparation and approval process.

Competitive Bidding Process. The Commission proposes to eliminate the requirement that priority one applicants file FCC Form 470 and wait 28 days before signing a contract, as long as those applicants are subject to public procurement requirements. Priority one applicants not subject to state and local bidding requirements, such as private schools and some

charter schools, would continue to comply with the Form 470 process. *Notice* at ¶¶21-25. EdLiNC supports the elimination of the Form 470 and posting process for priority one service applicants because most state and local governments already require that schools engage in public procurement processes, all of which incorporate strong auditing programs. Furthermore, as the Commission and commenters note, there have been relatively few instances of alleged waste, fraud and abuse with priority one requests. *Notice* at ¶23.

Fair and Open Competitive Bidding Rule. The Commission proposes a comprehensive new rule to codify that an applicant must conduct a fair and open bidding process when seeking bids for eligible services. The proposed rule would apply to all applicants for priority one and priority two services in addition to state and local procurement requirements. *Notice* at ¶¶26-31.

EdLiNC generally considers the proposed fair and competitive bidding rule well-intentioned. EdLiNC focuses its comments on two requirements that it believes will have serious adverse consequences. First, the rule prohibits applicant employees or board members from serving on the board of any telecommunications, Internet access, or internal connections provider that participates in the E-rate program in the same state. *Notice* at ¶29. EdLiNC believes that this requirement would disadvantage small cities and towns because fewer people would be eligible to serve on provider company boards. In addition, the proposal would deprive provider company boards of the expertise and perspective of school and library representatives. EdLiNC recommends that the Commission revise its proposal to allow applicant board members to recuse themselves in potential conflict of interest situations. Many state and local laws currently require such recusal.

We also recommend that, if the Commission does impose this rule, it grant a waiver to governmental entities that serve as providers as many of their boards are comprised of school district personnel. For example, Ohio has Information Technology Centers (ITCs) that were established to serve Ohio's school districts and charter schools. These ITCs are governed by local boards consisting of the superintendents and treasurers of the constituent school districts. All but one of the Ohio ITCs have become Internet Service Providers with their own SPINs. The local control of these boards has been a significant force in driving down the cost of Internet access for Ohio schools. The prohibition of applicant employees from serving on ISP boards would completely dismantle the entire educational high speed network in Ohio resulting in significantly higher costs to districts as well as greatly reduced efficiency.

Second, under the proposed rule, a service provider may furnish information to an applicant, including demonstrations, before an applicant posts the Form 470, but not during the bid selection process. EdLiNC recommends that the Commission delete this requirement from the final competitive bidding rule. EdLiNC's member associations believe that applicants need access to useful information during the bidding process. In particular, demonstrations and question and answer sessions have proven to be critical information resources during the bidding process. At a minimum, EdLiNC requests that the Commission clarify the scope of the proposed rule. For example, would the prohibition on demonstrations also apply to questions?

Discount Matrix Streamlining. The Commission proposes to revise its discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building. The *Notice* seeks comment on whether a similar requirement should apply to libraries. *Notice* at

¶¶34-36. EdLiNC opposes this proposal because it would adversely affect low income schools in large or county-wide districts by reducing their discount rate percentages. Conversely, wealthy schools in the same districts would benefit from an increase in their discount rates.

Rural Definition. The Commission proposes that an area will be considered rural for E-rate purposes based on the methodology and locale codes used by the U.S. Department of Education's National Center for Education Statistics ("NCES"), also known as urban-centric locale codes. Any school or library classified as "town-distant," "town-remote," "rural-distant," or "rural-remote" by an NCES urban-centric locale code will be considered rural for purposes of calculating its E-rate discount level. *Notice* at ¶¶37-40. EdLiNC supports the proposal but urges the Commission to incorporate the urban-centric local code 41, "urban fringe" into its definition of "rural area." This will enable high cost rural areas located near cities to benefit from the higher discount rates they require and will also ensure that school districts considered rural by the U.S. Department of Education are also considered rural for the purposes of E-Rate.⁵

Application Process Streamlining. The *Notice* seeks comment on proposals to improve the efficiency of the online application system generally and also proposes that applicants be required to file application forms electronically. *Notice* at ¶¶32-33. EdLiNC supports the use of electronic filing in most instances. However, the Commission should recognize that electronic filing may not be feasible for rural and urban applicants that may lack adequate bandwidth for online filing and for replacement contracts that must be filed out of cycle.

⁵ Libraries face slightly different issues with regard to the proposal to use the NCES locale codes to determine rural location of a school or library. As it stands today, libraries do not have locale codes and would therefore need to develop an alternative mechanism.

Therefore, we urge the Commission to allow waivers on case-by-case bases that will permit paper filing when necessary.

CONCLUSION

EdLiNC commends the Commission for issuing this *Notice* which addresses so many important aspects of the E-rate program. EdLiNC also appreciates the opportunity to present its views on many of these program-related matters. However, EdLiNC respectfully submits that the issue of devising a sufficient and sustainable funding mechanism for the E-rate program should be the Commission's primary goal in this proceeding. The current funding regime threatens the utility and integrity of the program and is unsustainable going forward.

In sum, EdLiNC adopts the following positions pursuant to this *Notice*:

- EdLiNC supports increasing the E-Rate's annual cap to meet demonstrated need based on annual demand figures *and* adjusting the cap annually to keep pace with inflation;
- EdLiNC opposes adding new eligible services, no matter how meritorious, as a result of the program's inability to meet current demand for existing eligible services and thus cannot support the proposal to expand E-Rate support to Internet access for computing devices when they leave school grounds;
- EdLiNC supports adding dark fiber as an eligible service because of its likely cost saving benefits;
- EdLiNC opposes proposals to alter the E-Rate's current funding structure to free-up funding for priority two services, especially proposals to: reduce or eliminate support for basic voice and maintenance services; increase the undiscounted portions of priority two services for the lowest income eligible applicants; institute per student funding caps/minimum funding amounts; set aside particular amounts for internal connections; revise the discount matrix; and permit only school districts to file applications;
- EdLiNC supports proposals to streamline the program's application process, including eliminating the technology planning requirement for priority one applicants that are otherwise subject to local, state or federal

technology plan requirements and eliminating the Form 470 posting requirement for those applicants already subject to state and local procurement rules;

- EdLiNC supports the majority of the sub-elements contained in the Fair and Competitive Bidding Rule proposal but objects to the requirement that applicant personnel be barred from serving on provider boards and seeks further clarification of the scope of the sub-element that prohibits demonstrations by providers during the 28-day bidding period;
- EdLiNC opposes the proposal to require that schools use their districts' averaged discount percentage as their discount rate; and
- EdLiNC supports basing the rural definition on US Department of Education measures but urges the inclusion of urban centric locale code 41 in the rural definition.

Respectfully submitted,

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