

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:

Comprehensive Review of the Universal Service)
Fund Management, Administration, and Oversight) WC Docket No. 05-195
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COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION
IN RESPONSE TO NOTICE OF INQUIRY

The American Library Association (ALA) is pleased to provide comments on the Commission's inquiry into ways to strengthen management, administration, and oversight of the Universal Service Fund (USF). We thank the Commission for the opportunity to weigh in on some of the most important issues facing the Fund, and more specifically, the E-rate program.

Program Impact

It would be difficult to overstate the impact that E-rate has had on America's libraries. Thousands of public libraries have applied for and received discounts on telecommunications and information services through the program, and thousands more have benefited from the increased broadband deployment E-rate is generally believed to have stimulated. Nearly all public libraries in the U.S. offer free public access to the Internet, connecting people to their government, educational opportunities, friends and family, and more. Recent increased demand at libraries - and similar patterns in the past - indicates that this service becomes increasingly important in difficult economic times. Libraries' use of E-rate discounts to provide patrons with desperately needed services is consistent with the fundamental purpose of the E-rate program, which is to provide access to advanced telecommunications and information services.

One reason for E-rate's success is the program's inherent flexibility. Libraries are local institutions; they are products of their communities and reflect their communities' needs and wishes. As such, it is essential that E-rate continue to allow local libraries to define their communities' needs and apply for the appropriate level of connectivity. It would be impossible to set an appropriate minimum connectivity level for public libraries. Capacity (i.e. bandwidth) is a moving target, especially as libraries strive to provide access to a constantly expanding list of online applications, government services and other patron demands. ALA strongly cautions the Commission against defining minimum connectivity levels as a quantifiable measure for evaluating program success.

Overview

The Commission seeks comment on ways to further strengthen management, administration, and oversight of the Universal Service Fund, how to define more clearly the goals of the USF, and the identification of any additional quantifiable performance measures that may be necessary or desirable, and whether, and to what extent, the Commission's oversight of the USF can be improved. The Commission also states their plan to build upon the comprehensive audit oversight conducted by the Commission's Inspector General in 2007. We applaud the Commission for taking a careful and comprehensive look at the Universal Service Fund, but our comments will focus on the E-rate program only.

The NOI reports a 12.9% improper payment rate for the E-rate program, which significantly exceeds the acceptable erroneous payment rate of 2.5 percent. We believe that the reasons for this high error rate are twofold:

1. E-rate has become so complex with so many nuances that it is almost impossible for the typical school or library to be 100% accurate in their execution of the application and invoicing processes. However, the FCC needs to consider the difference between intentional fraud and errors due to program complexity.
2. It is commonly understood that it takes an applicant three years and two complete application cycles to grasp the very basics of the program. Yet, it is our understanding that the audit firms hired to conduct these audits are given less than three days of training on the various aspects of the program.

We believe that once the core issues are understood, real solutions can be found and real improvement can be made to this program that is so critical to the success of the nation's libraries and schools. More audits and more performance measures will not address the fundamental issues that are at the heart of the suggested error rate.

For these reasons, we do not believe that E-rate's problems will be solved by further scrutiny from people who don't understand the program. We strongly urge the Commission to focus its efforts on streamlining and simplifying the program rather than creating more benchmarks and performing more audits. Doing so will allow schools and libraries to be more successful in their application for and effective use of the funds.

The goal of the E-rate program is clear: provide access to advanced telecommunications and information services. The Commission's goal in managing this program must be to create opportunities for applicant success. This is not simply an academic argument; the E-rate program is more vital now than it was in 1996. Our growing dependence on technology for all aspects of education and library functions, along with the realization that our bandwidth needs are outpacing the affordable capacities available to schools and libraries in most areas of the country, means that we must find a way to improve the opportunity for applicant success in this program. Adding more hoops to jump through will not achieve that outcome. In fact, doing so will only further discourage and frustrate applicants. In a

nationwide survey conducted by ALA in the fall of 2007, 40.4 percent of respondents said the #1 reason they did not apply because the program is too complicated.¹

Primary Responsibility - Safeguarding the Program

Having said that, we recognize that it is the responsibility of the Commission to ensure the funds are used for their intended purpose and that fraudulent activities be identified. While we agree that it is essential that there are safeguards in place to guard against fraudulent activities, we remind the Commission that unintentional errors caused by program complexity are not the same thing as fraud.

Logic dictates that catching errors through audits does not prevent future errors. The only way to reduce errors in the program is to make the program simpler for applicants. We suggest that streamlining and simplification will make it easier for applicants to understand and therefore comply with the program requirements, that the application and related invoicing processes will be more successful, and that the stated outcome of access to advanced telecommunications and information services will be achieved. In response to an NPRM issued by the Commission in August 2005, the ALA and many other organizations submitted comprehensive comments on program simplification.

To state it another way, it is virtually impossible for well-meaning schools and libraries to achieve unknown black and white audit requirements given grey program guidance. Specifically, we point to the fact that the documentation requirements laid out in the FCC's Fifth Report and Order seemed to have little to do with the documents that were actually requested by the field auditors.

Further, it is our belief that the high error rate suggested in this NOI is the result of audits that are being conducted by auditors who have virtually no or limited understanding of the program. Consequently, we believe that once the program Administrator has the opportunity to review the findings of the auditors and assess the extent to which the error rate reflects violations of actual program rules, this rate will significantly decrease. We urge the Commission to consider this additional data before it creates further program requirements or develops additional rules. The lack of detailed understanding of the complexities of the program on the part of the auditors undoubtedly results in a very high rate of false positives, creating an additional and unnecessary burden both on librarians who will need to appeal and on FCC and SLD staff who will need to resolve these cases.

If additional USF safeguards are created, those safeguards should be targeted and appropriate for a specific program. With such differences in the four USF programs, it seems difficult at best to implement a single set of safeguards that would be applied uniformly to the unique aspects of each of the programs.

¹Libraries Connect Communities: Public Library Funding & Technology Study 2007-2008. Available: <http://www.ala.org/ala/aboutala/offices/ors/plftas/0708report.cfm>

Incentive Based Program for Executives to Reduce and Prevent Improper Payments

We are concerned that the Commission has directed the Administrator to establish incentive-based systems for its administrators as it relates to improper payments. Instead, we suggest that providing incentives to work more closely with the Commission to offer methods by which the program could be more easily understood would have far greater impact. We are not suggesting more training for the program as it currently exists-but rather finding methods by which to simplify the complexities of the program to ensure applicant success, program compliance, and effective use of the fund for its intended purpose.

We urge the Commission to consider that errors are more often due to the complexity of the program than they are to any form of fraud or abuse. Simplifying the program rules and providing clear and comprehensive guidance would mean higher rates of compliance. Rather than focusing efforts on executive incentive compensation based on the "numbers game" of improper payments and a "gotcha" mentality, the overall benefit to the fund would be better served if those incentives were directed toward solutions to improve the program which in turn would, by default, ensure higher levels of compliance and properly disbursed funding. When compensation is focused on the problems rather than the solutions that will avoid the problems, we believe the focus on the program intent is likely to be lost.

Similarly, while we appreciate the intended purpose of the focus on developing customer service standards, we would rather that the time of those who know the program best be spent analyzing and offering solutions rather than documenting phone conversations in which applicants and state coordinators seek assistance. Quality of service to stakeholders would be more greatly felt by having fewer problems for which communications become necessary.

Documentation Requirements

In general, applicants understand the need for the document retention requirements established in the FCC's Fifth Report and Order. However, the recent round of IPIA audits produced a whole new level of documentation requirements that extended far beyond the items outlined in the Fifth Report and Order. The additional documentation retention requirements-without any notice or direction from either the FCC or the SLD-seem unreasonable, burdensome, and unfairly contribute to the error rate identified in this NOI.

Applicants appreciate the value of conducting reasonable audits to ensure that funds are appropriately and responsibly used, but this latest round of audits feels somewhat like a witch hunt to uncover problems where real problems do not exist. Was there an incentive for finding problems? Was the cost of the audits more than the value of the funds to be recovered? At what point are these findings significant in a program so complex that it is virtually impossible for the typical school or library to understand every nuance of the program-nuances that are not documented by either the FCC or the SLD? Schools and libraries generally do not have full-time staff to devote to uncovering programmatic nuances. Yet, the impact of returning funds during tough economic times, or losing jobs over unclear program rules or lack of documentation given the ever-changing staffing at libraries and

schools, is a high price to pay for those who take on the rigorous task of applying for assistance to ensure that their libraries or schools can operate effectively in the twenty-first century.

Let us be clear, however. We absolutely support the need to identify intentional non-compliance issues (fraud). What we do not support is the focus on unintentional errors caused by programmatic complexities and nuances that are impossible for the average school and library to stay on top of. To repeat, these types of errors are better solved by simplification and communication rather than more audits.

Universal Service Reform

We understand that the Commission is continuing its review of the Fund including ways to simplify the E-rate program. As we have stated above, we take this opportunity to urge the Commission to consider bold ways in which to simplify the program and to refrain from tweaks. Small changes can lead to big confusion for applicants.

Audits of Program Participants

As this NOI points out, the FCC, in the Comprehensive Review NPRM, asked whether the Commission should require audits of program participants. In the Comprehensive Review Order, the FCC concluded that the Inspector General's compliance audits of contributions to the USF and distributions from the USF would provide appropriate audit oversight of the USF programs and that an additional annual audit requirement was unnecessary. We agree with that conclusion. Yet, the auditors asked for copies of beneficiary audits. This is a perfect example of the work being performed by auditors being inconsistent with the decisions of the Commission (and being a surprise to the applicants). Suggesting that the E-rate program is "at risk" when the assessment is based on audits that are inconsistent with the programmatic requirements set out by the Commission and before review of the audit findings by the program Administrator creates an image of the program that we believe is inaccurate.

Additional Audits

This NOI indicates that it is the intent of the Inspector General to increase the number of audits this year. Again, we urge the Inspector General to consider the validity of the audits when it seems virtually impossible for the auditors to grasp the program requirements, nuances, and complexities in the meager training they receive.

Further, it has been our experience that guidance given by the FCC and the SLD seems, at times, to be completely ignored by the auditors. In those situations where applicants have staff or consultants dedicated to E-rate, explanations can sometimes be provided to the auditors to help them understand or carry back questions about the program requirements/rules. However, those schools and libraries who can not afford either full-time staff or external consultants are clearly disadvantaged by the lack of knowledge of the auditors. Having the auditors themselves on site may not be intimidating, but the audit process is. We suspect that applicants are unknowingly accepting findings that are not accurate or for which clarifications provided on newly required documentation might

produce sufficient information if only the applicants recognized that the auditors have very limited program knowledge and that further questions and explanations might provide a more accurate representation of the situation.

Consortia Audits

With the Inspector General's plan to expand the audit program, we would suggest that careful consideration be given to the differences that exist between individual library/library systems and school/school districts and that of large consortia applicants. It would also help to define the documentation expectation of consortium leads.

For example, never before has there been an identification or expectation of a requirement that applicants with hundreds of recipients of service are required to produce individual institutional financial reports for each of the consortia participants. This type of change will likely lead to fewer consortia applications filed in the future. Since aggregated procurements generally lead to lower costs, fewer consortia applications will mean that the cost for services will go up for applicants. The net result is that the fund will not go as far in meeting a demand that already exceeds funds available. One wonders what the tradeoff of audit findings will be to the lack of buying power caused by a decline in consortia applications.

We are hearing that many consortia applicants are no longer willing to take the financial risk for submitting applications on behalf of schools and libraries. One wrong move in an extremely complicated program and a state represented by a consortia application could find themselves giving back millions of dollars-dollars that are not available in these economic times. Do we really want this program causing major agencies of state government to be shut down, or deny network access to libraries and schools, as they struggle to repay funds? Further, is it really reasonable to require that consortia leads who collect hundreds of Letters of Agency and hundreds of Forms 479 (both known program requirements) must also turn to the local school districts or library systems and ask them to prove that the staff member who signed these forms as the authorized person for their respective entities are actually authorized to sign? This produces hundreds more documents but does not improve the program at all. Is a letter on school or library letterhead from a Superintendent or Library Director saying that their staff has the authority to sign really going to identify waste, fraud and abuse? Or, is it simply going to add one more level of complexity that will cause applicants to give up?

Additional Rules Pertaining to Document Retention and Enforcement

The Commission seeks comments on whether it should establish additional rules pertaining to document retention and enforcement. We just ask that the Commission be clear about what documents will reasonably satisfy an audit to ensure that funds are properly being spent and to communicate those requirements to the applicants. Many applicants believed they were precisely following the program requirements by keeping those documents identified in the FCC's Fifth Report and Order only to find that, upon audit, additional items such as those outlined above were also required.

The Commission asks if recipients of universal service funding should be required to retain documents that they are currently not required to retain. Our answer is a resounding "no,"

but if the Commission decides to move in this direction, please be clear with applicants so they know what to retain in the future. Yet, if the intended purpose of the program is to provide a fund that helps libraries and schools achieve access to the kinds of services that will help to support their technological needs, then adding more documentation requirements or more rules seems more consistent with a way to kill a program than to provide much needed assistance.

Program Goal

We believe the goal of the program is clear – to provide access to advanced telecommunications and information services. We do not believe there is any need for further specific qualitative or quantitative goals besides those currently identified in Section 254 of the Act. As we said at the outset, one of the hallmarks of this program is that the support is based on the need of the individual applicant. If an ever-changing environment, applicants must be able to base their request for support on their need.

Permanent Administrator

The Commission seeks to refresh the record on the issue of using USAC as the permanent Administrator of the program. In such a complicated program, it is inconceivable to imagine that it could be administered without the institutional knowledge gained by USAC over the ten year history of this program. The program is complex. This is not a simple matter of ordering x services, paying for x services, and confirming that x services were received and properly paid for. A contractor could not effectively administer the program as it is currently structured.

Performance Management

The Commission specifically asks about the "output measures" that were adopted in 2007. We would suggest that focusing on "outcome measures" would be far more beneficial than focusing on output measures. When the focus is on producing numbers, the emphasis is no longer on success but rather on meeting a benchmark that ensures contractor payment and executive compensation. The Commission should focus instead on making the program more useable. Don't just continue to explain the complexities of the program. Ensure success by making the program less complex. This program cannot be all things to all people. Many of the most confusing program tweaks were created in response to very narrow needs and concerns. This confusion for all results in benefit for very few.

Authority of the Commission to Set Goals for the Program

The overarching goal of the E-rate program -- providing access to advanced telecommunications and information services -- was set by Congress in the 1996 Telecommunications Act. It is not our understanding that the Commission has the authority to change the goals for this program. Furthermore, this goal is important and appropriate for libraries. With increasing demands on existing bandwidth, the goal of providing adequate connectivity is challenging. E-rate's focus on connectivity helps libraries meet this demand.

Relationship between NECA and the USF Administrator

While we have not seen the proposal regarding whether USAC should be divested from NECA ownership, we believe there is the potential for conflict of interest. NECA works as a contractor for USAC, yet USAC is a subsidiary of NECA - this scenario does not seem to provide the separation necessary for effective program administration. These kinds of relationships are not permitted by the applicants, so why should they be permitted for the fund Administrator? At the very least, we agree that conflict of interest requirements pertaining to NECA in its relationship with USAC should absolutely be adopted.

Summary

The comments above reflect the frustrations of applicants who continue to participate in and benefit from the E-rate program despite issues with the way it is administered. It is harder for us to give voice to the applicants who have given up on the program and no longer participate. What we do know is that program complexity is the most often cited reason for non-participation. We believe that complicating the program further will lead to fewer, not more, successful applications.

We appreciate the Commission's need to carefully evaluate program compliance. However, the audits should take into account the complexity of the program and provide applicants with feedback that will help them create better applications in the future. Auditors currently in the field do not have the necessary program knowledge to truly evaluate program compliance.

We thank the Commission for the opportunity to provide feedback on program administration. Library patrons across the country depend on E-rate to make affordable connections that allow local libraries to offer much needed services. We look forward to working with the Commission in the future as it continues to shape the program to meet the goal of providing access to advanced information and telecommunications services.

Thank you for considering our comments.

Sincerely,

Emily Sheketoff
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