

Before the Federal Communications Commission
Washington DC 20554

In the Matter of) GN Docket Nos. 09-47, 09-51, 09-137
) CC Docket No. 02-6
Broadband Needs in Education, Including) WC Docket No. 05-195
Changes to E-rate Program to Improve)
Broadband Deployment)
NPB Public Notice #15)
)
Notice of Inquiry)

Comments of the Education and Libraries Networks Coalition

Introduction

The Education and Libraries Networks Coalition (EdLiNC), a group comprised of the leading public and private education associations and the American Library Association, was formed in 1995 to advocate for the interests of schools and libraries in the 1996 Telecommunications Act. Since the enactment of the E-Rate as part of the Act, EdLiNC has pursued a mission of preserving and protecting the E-Rate and has filed in every Commission rulemaking related to the program. As is reflected in our comments below, EdLiNC continues to focus on the preservation of the E-Rate and to advocate that E-Rate discounts reach those most in need, thereby preserving the program's integrity.

In our initial comments on the Commission's most recent Notice of Inquiry (NOI), we address a number of major issues raised including proposed E-Rate modifications, E-Rate disbursement, and E-Rate funding. EdLiNC firmly believes that the E-Rate program has an important role to play in a new national broadband plan and has already proven successful in improving broadband connectivity in schools and libraries throughout the nation, particularly in low-income and rural localities. While the NOI requests comments on a number of issues, we will only address those issues that are directly related to the E-Rate program.

EdLiNC asserts that E-Rate is already a telecommunications program that supports broadband and urges the Commission to measure speed to the end user in order to determine service adequacy.

In section 11 of the NOI, the Commission seeks comment on whether the E-Rate program can be modified to more effectively meet the needs of applicants and whether the program can be a vehicle to stimulate the adoption of broadband throughout communities. EdLiNC asserts that the E-Rate has effectively and efficiently worked to support broadband connectivity in public libraries and public and private schools since its inception in 1996. Since that time, numerous schools and libraries have used support

from the E-Rate program to deliver broadband-grade service to students, educators, and community members across the country for various purposes. In addition to supporting ongoing broadband-grade service to schools, there is evidence that the E-Rate program has catalyzed access to the Internet in surrounding communities and other institutions.

In section 11a of the NOI, the Commission seeks comments on whether it is possible to determine the various speeds at which E-Rate supported connections are being delivered. As we are not aware of any nationwide data maps that exist which show bandwidth to end user devices in schools or libraries, EdLiNC believes that, as a first step, the Commission should work with other federal agencies to develop such a data map. This data map should measure speed to end user devices, include upstream and downstream speeds, and take into account the multiple user environments found in schools and libraries. EdLiNC supports the Commission reviewing submitted E-Rate applications and data currently collected by the E-Rate program's administrator to determine whether such data could be used to inform a data map of schools and public libraries.

Separately, EdLiNC is compelled to register its objection to the broadband definition propounded in the recent first-round Notice of Funds Availability (NOFA) by the National Telecommunications and Information Administration (NTIA) to implement the Broadband Technologies Opportunities Program (BTOP). We object to NTIA's adoption of a single definition of broadband (768 kbps download) that is quite simply inadequate for multiple user environments such as schools and libraries. That level of speed cannot sustain the bandwidth intensive educational content and services that schools and libraries use or aspire to use.

EdLiNC asserts that the Commission should not contravene Congressional intent that the E-Rate exist as a telecommunications and information services program with eligibility restricted to K-12 public and private schools and public libraries.

In section 11d of the NOI, the Commission raises the question of expanding the current eligible class of users "to permit colleges, community colleges, pre-Kindergarten, Headstart, or other entities to participate in the E-Rate program." Section 11e queries the possibility of extending E-Rate support to cover currently ineligible, non-connectivity services, such as computers and training.

EdLiNC opposes this expansion. Congress made an affirmative decision to limit E-Rate eligibility to public and private K-12 schools and public libraries and only Congress can expand eligibility to encompass other users. Additionally, some of the groups mentioned in the NOI, specifically certain pre-schools and Headstart programs, are already eligible for E-Rate support as they are included in some states' definitions of eligible users. Finally, adding computers and training to the E-Rate – while appealing – would move the program away from its intended connectivity (not adoption) goals and beyond the considerable ambit of the Commission, which has no authority to regulate computing devices and educational training services.

Beyond those concerns, EdLiNC primarily objects to adding new classes of eligible applicants and/or new classes of eligible services because the program lacks sufficient funds to adequately meet the needs of existing eligible entities for existing eligible services. There is ample evidence to support that the E-Rate program is unable to support new classes of users or new non-connectivity services. Each year, almost 40,000 applications are submitted to the E-Rate program, and annual demand routinely exceeds the programs \$2.25 billion spending cap. A March 2009 study by the Government Accountability Office found that: “From 1998 through 2007, applicants requested a total of about \$41 billion in E-Rate funding—174 percent of the \$23.4 billion in program funding available during that time.”¹ For Funding Year 2009, total estimated E-Rate demand equaled \$3.99 billion, approximately \$1.75 billion over its funding limit.

Moreover, due to the increasing demand for Priority One services – often recurring telephone and Internet access costs – the vast majority of the E-Rate’s resources are consumed by them. For example, in 2003 Priority One services accounted for 43% of funding commitments. Funding commitments for Priority One services grew to 60% in 2007. The estimated demand for Priority One services in 2009 will increase by 4.3% over 2008 levels to \$2.04 billion and the final Priority One allocation could amount to as much as 80% of the total funding commitment.

As a result of the growing demand for Priority One services, the funding available for Priority Two services – internal connections costs – has declined. Thus, there are not enough funds available for Priority Two services, causing the E-Rate program to deny assistance to many low-income schools that fall just below the 80% poverty level. In fact, the only year in which all valid requests for Priority Two services were funded was Funding Year 2 (1999-2000). Three years later, Priority Two commitments totaled \$1.5 billion or 56% of the total amount committed in 2003. By 2007, Priority Two applications accounted for only 39% of the total amount committed. Funding for Priority Two services is expected to decrease again in Funding Year 2009. Based on the lack of available support in Priority Two for below 80% applicants, it is fair to surmise that the average demand for E-Rate – roughly \$4 billion – is likely artificially low because many eligible applicants have simply decided against applying.

Congress’s intent in authorizing the E-Rate program was to close the digital divide by ensuring that all schools and libraries would have access to advanced telecommunications and information services at just, reasonable, and affordable rates. However, the E-Rate’s current funding level does not support Congress’s intent. Based on current program guidelines and demand, only schools and libraries at the most dire end of the poverty spectrum are provided with Priority Two access. With fewer dollars available for Priority Two each year, this group of schools and libraries is getting smaller and smaller. This leaves many students and communities unconnected.

¹ “Long Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses,” The Government Accountability Office, Washington, DC: March 2009, pp. 13-14. ,

EdLiNC urges the Commission to raise the E-Rate program's annual cap.

Building off of the previous paragraphs of our response and in response to NOI section 13a's question regarding the extent to which the annual cap "limit(s) the extent of broadband deployment by eligible schools and libraries," EdLiNC believes that the time has come for the Commission to increase the program's annual cap. The E-Rate cap has not been raised from the program's \$2.25 billion spending cap since 1997, nor has it been adjusted in response to inflation. EdLiNC heartily concurs with the sentiments expressed by Chairman Rockefeller, in a recent letter addressed to Chairman Genachowski, in which he observed that the program's cap had not kept pace with inflationary pressures over the past ten years and requested that the Commission "expeditiously adjust commission rules to address the toll that inflation has taken on this important program."

By increasing the cap to meet the current constraints of the E-Rate, the Commission would provide schools and libraries with sufficient funds to meet the growing needs of Priority One services and allow the program to also fund Priority Two services to institutions at lower discount levels. This, in turn, would allow the program to fund more schools and allow more students access to broadband services to help prepare them for the 21st century economy.

EdLiNC objects to any proposal to merge the E-Rate and the Enhancing Education Through Technology program.

Section 11g of the NOI asks about the potential impact on broadband connectivity of combining E-Rate funds with funds from the Enhancing Education Through Technology (EETT) program, which provides K-12 schools with support for hardware, software and professional development.

Congress made the determination to deploy E-Rate funds only in support of telecommunications and information services, i.e. connectivity services, because it was cognizant that the US Department of Education already funded robust programs that helped subsidize school needs for hardware, software and training. Today, those same programs have become the EETT program, which provides formula and competitive grant funding to schools around the country for those very same uses.

EdLiNC believes that EETT and E-Rate are and should remain entirely separate and distinct, though complementary, programs. We believe that the programs serve completely different goals – E-Rate's success metrics involve Internet access while EETT's success is measured based on student technological literacy. Moreover, the programs are funded in completely different ways – E-Rate funding comes from assessments on telecommunications companies that support telecommunications services while EETT is funded through federal tax dollars. Requiring E-Rate to support computers and training would lead to telecommunications companies incurring costs for products and services that they do not provide. Based on this, EdLiNC asserts that EETT should continue to be a separate program that complements the E-Rate and that the Commission should not destabilize either program by taking steps that could lead to merging them.

EdLiNC recognizes value in coordinating the programs to provide opportunities to pool funds and leverage resources, however EdLiNC remains concerned that merging would mean less overall funding for both programs and compound the already strained funding situations of each.

EdLiNC Asserts that the E-Rate Program Rules Could Be Modified to Provide Additional Opportunities for Broadband Access to Communities

Section 10c of the NOI seeks comment “on program modifications to maximize the use of broadband connections that are subsidized by the E-Rate program. It specifically references the possibility of modifying program rules to allow for use of broadband facilities at schools by the general community, rather than just by school faculty and students.”

One area in which EdLiNC believes that the Commission can have an immediate impact is in sanctioning a program rule change that would facilitate the use of E-Rate supported services in schools by community members during non-school hours. Current E-Rate program rules make it difficult for schools to allow the public to use supported telecommunications and Internet services during non-school hours. Under the current rules, schools must cost allocate E-Rate services if such services are used for non-educational purposes, a process that many consider time consuming and burdensome. Because the requirements for which E-Rate funds were approved have already been met, cost allocation is a needless activity that merely serves to further complicate the E-Rate program.

Accordingly, EdLiNC urges the Commission to allow schools to permit the public to use supported telecommunications and Internet services during non-school hours without requiring schools to engage in the cost allocation process. By relieving this burden on schools, they could focus on providing community broadband access to help advance online learning, stimulate economic growth, and increase demand for broadband. In making this recommendation, it is important to note that EdLiNC is not seeking additional capacity and/or services, or additional funding. Instead, we are simply asking that additional uses of services under the E-Rate program at eligible school facilities be allowed for community purposes after the E-Rate program requirements have first been met.

EdLiNC urges the Commission to Simplify the E-Rate’s Application Process

EdLiNC supports simplifying the E-Rate application process:

- Establishing a multi-year application for Priority One services in which funding requests would be considered annually along with all other applications received within the application window;
- Involving more technology in the entire process, including making forms available online, making the USAC website interactive, and allowing applicants to e-mail rather than fax communications;

- Increasing information available to applicants throughout the process by providing applicants the latest information on the status on internal connections and the procedure and current status of audit reviews;
- Changing the library poverty rates for the purposes of the E-Rate programs; and
- Exempting all Universal Service Programs from the Anti-Deficiency Act (ADA).

EdLiNC does not support changing E-Rate discount levels.

The Commission also seeks comment in section 12b of the NOI on whether there should be a change in the discount levels to maximize broadband deployment. EdLiNC opposes modifying the discount levels, especially for Priority One services. The telecommunications and Internet access services that constitute Priority One services represent fixed costs for local schools and libraries. Any changes in the discounts that causes them to bear a greater share of those costs, even for the noble purpose of improving broadband deployment, would inflict major damage on school and library budgets, particularly during this economic downturn.

Conclusion

EdLiNC appreciates the opportunity to provide comments about issues related to the E-Rate program. E-Rate has been a vital part of the nation's technology infrastructure for public and private schools and public libraries for over a decade, and its efforts should be recognized, leveraged, enhanced, and protected as we move into the future.

Appendix A: Members of EdLiNC

EdLiNC is a coalition of educational and library groups that have been working together to provide schools and libraries with affordable access to telecommunications and to ensure the effective implementation of the program. More information about EdLiNC is available from our website at <http://www.edlinc.org>. EdLiNC's members include:

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 School Boards Association
United States Conference of Catholic Bishops