



1101 Stadium Drive · Ada, OK 74820 · office: 580.332.1444 · fax: 580.332.2532 · email: info@kelloggllc.com

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

)	
E-Rate Broadband Notice of Proposed Rulemaking)	CC Docket No. 02-6
Eligible Services List Further Notice of Proposed Rulemaking)	GN Docket No. 09-51
E-Rate Draft Eligible Services List for Funding Year 2011)	

Comments of Kellogg & Sovereign® Consulting, LLC

Kellogg & Sovereign® Consulting, LLC (“KSLLC”) has been providing comprehensive E-rate management services for schools and libraries since the inception of the program in 1998. KSLLC works with the E-Rate program on a daily basis managing over 220 clients in 8 states. In FY 2010, KSLLC filed 399 Form 471 applications totaling \$67 million in pre-discount requests. Accordingly, we have an in-depth knowledge of the program and are well versed in all areas of the E-Rate program. As former grant writers and educators, we embraced the concept of the E-rate program when it was first available and have seen “first hand” the positive and lasting impact E-rate funding has and continues to have in enabling our nation’s schools and libraries to provide Internet Access and telecommunications services to students and communities. We applaud the initiatives set forth by the Commission in the National Broadband Plan and have dedicated extensive time and careful thought in reviewing the changes proposed by the Commission. We appreciate this opportunity to provide our analysis of the proposed changes.

Kellogg & Sovereign Consulting, LLC is a founding member of the E-Rate Management Professionals Association (E-mpa™), and we uphold the quality standards set forth in the E-mpa™ code of ethics. We support the comments submitted July 8, 2010 by E-mpa™.

E-RATE BROADBAND NOTICE OF PROPOSED RULEMAKING¹

Comments Regarding Streamlining the Application Process

- **Reduce Duplicative Reviews & Provide Clarification for Program Reviewers**

As the Commission considers ways to streamline the application process, we would recommend that they consider simplification in not only the filing of the applications themselves but also in the approval and review process. The Commission can reduce the amount of time applications are reviewed and reduce administrative costs by all parties involved by clearly providing instructions on the level of review for various areas of the program. This is most critical in any area in which the applicant already has processes and procedures in place and already is subject to review from state and local agencies.

Areas that could be significantly streamlined with this underlying concept include the following:

Reduce Duplicative Review of State and Local Procurement Requirements. By definition, eligible schools and libraries are already approved institutions that must report to state and local officials. These institutions already have procurement procedures in place which are audited and reviewed. The FCC could significantly streamline the E-Rate application process by NOT requiring duplicative review and oversight of the applicant's state and local procurement rules. If the applicant is eligible for E-Rate funding by definition they should be presumed to have these procedures in place and no duplicate review of these areas should be necessary by the program Administrator.

Remove Contract Requirement for Priority One Services. The FCC requirement that applicants who have or will have an underlying contract associated with month to month or tariffed services must sign and date the contract prior to filing the Form 471 has caused an enormous administrative burden on all parties involved and for no additional value to the program. The applicants should be able to follow their normal state and local procurement rules regarding contracts for Priority One services. The added burden to prepare and sign contracts so that dates properly "line up" with the Form 471 has not added any value to the program but has certainly added many hours of administrative work.

¹ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, FCC 10-83 (rel. May 20, 2010) (*E-rate Broadband NPRM*).

Example of normal contract process according to most applicants' state and local procurement guidelines without E-Rate artificial date requirements:

1. Applicant posts Form 470 based on technology plan
2. 28 day competitive bidding period
3. Applicant evaluates bids and selects most cost effective solution
4. Governing Board approves bids for selected products/services and notifies service providers of selection.
5. Applicant files Form 471
6. Applicant waits until funding letter arrives to start new service
7. Funding letter arrives
8. Applicant contacts service provider to begin services. Board approves final costs, signs formal contracts, prepares purchase orders
9. Service provider begins service

To require the formal contract BEFORE funding and BEFORE the funding year begins, creates an extra administrative document commonly called the "E-Rate contract" and endless problems for the applicant and the service provider. Many state statutes prohibit the current board from encumbering funds for the next funding year prior to the start of the year. Also, many applicants do not have their final budgets until ad valorem taxes are finalized. These final budgets and approvals are almost always effective July 1 of the applicant's funding year and but not in November of the year prior.

The "work around" is to create "E-rate contracts" prior to the filing of the Form 471 which are contingent upon funding and then once funded, contingent upon approval of the governing board. The reality is that the "E-Rate contract" is prepared only to meet E-Rate requirements and the "real contract" is written to supercede the "E-rate contract" once the applicant receives funding and is ready to install the service. Some providers include an "E-Rate rider" to their standard contract terms and conditions which enables the applicant to sign the contract prior to the date allowed by their normal procurement processes. Service providers have had to develop internal legal departments solely to handle the "E-rate contracts" since these do not follow the normal procurement process.

Another problem with the "E-rate contract" is the issue of multi-year agreements. Frequently the applicant does not sign their "real contract" with the provider until services begin. Also, the term of the multi-year agreement is commonly a set number of months from the first date of service which creates various beginning and ending contract dates for applicants. The reality is it is very rare to have a service that is truly installed on July 1 of the funding year. So the real contract start date may be any day during the year and the termination date a set number of months after.

Since the requirement that the contracts associated with priority one services be signed and dated prior to filing the Form 471 does not reflect applicant's and service providers' normal procurement processes, many applicants find themselves with denial of E-Rate funding due to wrong dates on their contracts and even incorrect signatures.

We understand that the intent of the contract requirement prior to filing the Form 471 was to ensure that the applicant was committed to purchasing the services once funding was approved, thereby reducing inflated requests in the program. However, we believe the contract requirement for Priority One services has resulted in an administrative burden that is significantly greater than the risk of inflated requests.

An alternative to the contract requirement for Priority One services would be to require any one of the following as proof of the applicant's commitment to purchase the products and services listed on the Form 471:

- Service Provider proposal signed and dated by both parties
- Service Provider proposal approved by the governing board
- Service Provider bill (invoice) for existing services which will continue to the following year

For the reasons discussed above, we believe the Commission could simplify the application process and significantly reduce the administrative burden on all parties involved by removing the contract requirement for Priority One services.

Reduce Duplicative Review of NSLP Data – Allow Reliance on State Approved Enrollment and Low Income Numbers. For the majority of applicants, the preparation of the student enrollment and low income data (i.e. number of students eligible for National School Lunch Program “NSLP” free and reduced lunch) required to complete Block 4 of the Form 471 is a basic task of transferring the data from reports provided to the state department of education to the Block 4. Public school districts already must gather, verify, and report this data to their respective state departments of education. The states in turn have review processes to ensure the enrollment and low income data reported is correct. The states have a vested interest in the accuracy of the data since it is used for various state and federal programs including E-rate. The complexity in the application process arises with the review of the NSLP data. The Administrator's Program Integrity Assurance (“PIA”) reviewers usually begin their review with state data and they only contact the applicant if the state numbers do not support the requested amount. However, during the recent audits, the auditors questioned the state-approved data and required applicants to produce the original documentation including providing the original signed free/reduced lunch application for individual students. Since there is not a presumption that the state data is accurate, the applicant had to produce the original documentation. This is a duplication of review since state officials have already

verified the data. To reduce the complexity of the application process related to the discount calculation, we recommend that the Commission consider providing a presumption that the state approved data is already verified and accurate. If there is a discrepancy between the data the applicant reports and the state data, then the reviewer would certainly need to ask further questions to understand the reason behind the discrepancy. In such cases, the applicant would need to work with their state to make any necessary corrections.

- **Provide Predictable Funding for Applicants – Time Limit for Recovery of Funds**

Provide Predictable Funding for Applicants by Setting Time Limit for Recovery of Funds - Statute of Limitations for Returning E-rate Funds. One of the barriers to participation in the E-rate program is the underlying fear that the applicant or service provider will make a mistake and years later they will have to return the E-rate funding. Currently any misappropriation of funds must be returned regardless of how long ago the event occurred and regardless of how the misappropriation occurred. To hold an applicant indefinitely responsible for funding that was carefully reviewed at all levels from the original application to payment of the invoice by the Administrator is unreasonable and creates an undue burden on the applicant.

In order to ensure that any misappropriated amount is returned to the fund no matter how small or how long ago or under what circumstances, E-rate program reviewers spend countless hours looking over prior year applications to find misappropriations no matter how small so they can comply with the program requirement to return misappropriated funds. An example of this inordinate expenditure of administrative costs is related to a Bearing Point site visit in August, 2005 regarding one funding request for \$1795.50 on the applicant's E-rate FY 2004 application. At the time of the visit, the applicant was to send to the site reviewer a copy of a sign in sheet for professional development and a copy of their technology plan approval letter. The applicant complied with the request and submitted the appropriate documentation. In March, 2010, a reviewer contacted the applicant and asked that they re-send the documentation as it could not be located. The applicant had since changed technology directors and replaced the director's computer so they no longer had access to the professional development sign in sheet. They did have a copy of the technology plan approval letter. All of this administrative activity took place for no benefit to the program.

The exact time period that would be reasonable ranges from 3 to 5 years. The IRS uses a 3 year time limit from the date the original tax return was due for taxpayers to receive a refund or be audited. One idea would be to use a three year period from the last date an invoice was paid by

the program Administrator for a particular funding request number. A five-year period from the last date of payment would align with the current E-rate five-year record retention requirement.

Technology Plans

Proposal to Eliminate Technology Plan for P1 Applications.

The FCC proposes elimination of the technology plan for priority one applicants that otherwise are subject to state and local technology planning requirements.

KSLLC recommends that the Commission consider simplifying the technology planning process by taking the following steps:

1. Set a presumption that a technology plan approved by an authorized technology plan approver is approved and no duplicative review is required.
2. Provide assurance to applicants with proper authorized third party technology plan approvals that funding cannot be denied or funds recovered for deficiencies in a technology plan including lack of evidence of a proper creation date as long as the applicant has third party approval for their technology plan.
3. If the Commission decides to remove the technology plan requirement for Priority One services, remove the requirement unconditionally for all applicants who apply for funding only in the Priority One categories of service.

We agree with the following comments submitted by the E-mpa™²

- **The conditional statement: “that otherwise are subject to state and local technology planning requirements” could add a great deal of complexity and risk to applicants depending on how the policy is administered.**
- **Eliminate the requirement for all applicants or none.** To require the technology plan based on the size or type of applicant would make the program more complicated not easier. Whatever decision is reached, the rules should be consistent for all applicants.
- **Third Party Technology plan approval should be presumed final approval with no further review or rebuttal.** Due to the wide variety of applicants, it makes the most sense to continue third party approval at the state and local level where authorized approvers have a better understanding of the unique issues for each applicant. Additionally, there should be protections for the applicant. There have been many audit findings where the applicant must return funds because, through no fault of their own, the plan approver made mistakes

² E-Rate Management Professionals Association, Inc. E-Rate NPRM Comments submitted 7/8/2010.

such as delaying approval of a plan or approving a plan that an auditor or other program reviewer determined was deficient. The rules should hold the applicant harmless as long as they submitted a plan and received authorized approval. We recommend that one of the best ways to simplify this particular area of the program is to presume that a technology plan that has been approved by an authorized technology plan approver is approved and no duplicative review is required.

- **Evidence of technology plan first version prior to filing the Form 470.** In reality, applicants who have been participating in the E-Rate program for a period of time do have a technology plan prior to the filing of the current year Form 470 because they all started with an initial plan in the first year of E-Rate funding (1999) or the first year that they filed for E-rate. A technology plan is a living document. The plan evolves each year and is formalized with an approval process in July of each year. Therefore, to deny funding for a district who didn't specifically make a new copy of their plan in the six months prior to filing their Form 470 for the current year doesn't make sense. The FCC could significantly simplify the technology plan requirement of the program by only requiring third party approval of a plan with no duplicative review the E-rate program Administrator. In other words, if a plan is approved by an authorized technology plan approver, then no duplicative review should be required. The approval letter should be the final "say so" that the applicant met this requirement.
- **Retain the FCC technology plan requirement for all priority two services.** We agree with this recommendation.

Competitive Bidding Process

FCC Form 470

The Commission is requesting comments on the proposal to simplify the application process for priority one ("P1") services by eliminating the requirement that applicants for priority one services file an FCC Form 470 and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements.

We are concerned with this proposal for several reasons:

1. The elimination of the standardized competitive bidding process will have the unintended result of significantly increasing the complexity of program review since compliance with local and state procurement requirements would remain a condition of receiving E-rate

funding and there would still be a need for the Administrator to have procedures to ensure this requirement was being properly met by the applicant.

2. The FCC proposals to provide greater competition and greater access to various providers and solutions for Internet Access and advanced telecommunications services will increase the need for competitive bidding process for priority one services.
3. Removal of the Form 470 removes access for schools and libraries to an excellent tool for advertising their bids nation-wide. Consequently, removal of this tool from Priority One filers will reduce opportunities for service providers to participate in a fair and open competitive bidding process.

Eliminating the Form 470 does not significantly shorten the application process. However, managing a change as to who must file a 470 and who is exempt is fraught with problems and delays in the application approval process. If schools and libraries are not required to post a 470 this could lead to an over burden to the program reviewers. In order to validate compliance with competitive bidding, reviewers would have to develop procedures to evaluate whether or not the applicant had sufficient competitive bidding processes and whether or not they were in compliance with their state and local procurement requirements. The only way to accomplish this level of review would be to learn and interpret all state and local procurement rules. This would lead to longer review times and could lead to different interpretations of the laws. Another complexity would be added for the applicant to determine if they needed to file a 470 or not. How would the school know if they had sufficient state and local procurement guidelines to opt out of the Form 470 requirement? What if the applicant thought they were in compliance, but then later found out that they should have filed a Form 470? It would then be too late to go back and file the Form 470 and they would lose funding for an entire year even though they thought they were doing things correctly.

As Internet Access and advanced telecommunications offerings continue to advance and demands on schools and libraries to provide access to advanced technologies continues to increase exponentially, the competitive bidding process for Priority One services will play a critical role in ensuring applicants select the most cost effective solution. As mentioned by the Commission, these services traditionally were more likely to be purchased “as commodities based on volume and distance, as opposed to being priced by project.” With the current trend towards participation by non-traditional providers in Priority One service offerings and the incorporation of innovative solutions using all technology available, we believe this will cause priority one services to be more like priority two services in nature with prices being driven by the solutions instead of being sold as a standard commodity.

Since the Form 470 is equally available to all service providers, it establishes a “level playing field” that provides equal access to bidding information to all service providers. Even though applicants frequently do have local and state procurement rules to follow, they do not have access to or the local funds needed to develop a uniform, nation-wide program to advertise their bids. Many service providers faithfully watch Form 470 postings and then contact the applicant advising them that they would like to bid on a particular product or service. We believe that by eliminating the filing of a Form 470 for P1 services, it will substantially reduce the amounts of potential bidders on P1 projects and significantly increase the costs of P1 services.

The problems listed by the Commission “associated deadlines, category selections, multi-year contract and contract extension requirements” will not be eliminated by removing the Form 470. The program requirements will still need to be complied with by the applicants and removal of the Form 470 simply makes the requirements less clear and harder to readily discern by the applicant. As we listed above, the Commission can simplify the application process and the Form 470-related denials by making the following changes as detailed earlier:

- Remove contract requirement for Priority One services which in turn would allow applicants to follow their state and local procurement requirements without additional layer of contractual and legal document requirements that do not reflect normal procurement processes.
- Set a presumption that public entities eligible for E-rate services are in compliance with their state and local procurement requirements thus removing the duplicative review of these processes by E-rate program reviewers and auditors.

Fair and Open Competitive Bidding Rule.

Codification of Competitive Bidding Rule. The Commission proposes to codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for services eligible for E-rate support. The Commission also proposes to provide illustrative guidance of the types of conduct that would satisfy or violate the rule. We agree that the codification of existing requirements should not increase the burden on E-rate applicants.

If the Commission chooses to codify the competitive bidding rule for Priority One applications, then the Commission will need to continue the standardized Form 470 filing process for Priority One services. As stated earlier, we believe the Form 470 provides the applicant with a standardized competitive bidding process which can be methodically reviewed for compliance by the Administrator. Removal of the Form 470 and standardized competitive bidding process would result in greatly increasing the complexity of the application process.

Illustrative Guidance on types of conduct. Although appeal decisions have brought forth a wide range of unacceptable behavior, we believe providing a list would NOT be a good idea as it would greatly increase the complexity of the program and add an additional administrative burden on all applicants, service providers, and program reviewers. As discussed in E-mpa™'s comments, once the Commission provides sample lists, the program reviewers will have to verify each item listed, and if the list omits an inappropriate behavior, there is a high potential that the inappropriate behavior could continue without penalty since it was not specifically listed. Since it is extremely difficult to anticipate all scenarios for inappropriate behavior, we recommend codification of the existing requirement and continue to use individual cases decided through appeal decisions to provide for the correct interpretation and application of the rules.

The items listed in the Commission's proposal are very difficult to test for compliance at a review level.

For example the first item listed "an applicant may not have a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with 'inside' information" should indeed be considered a prohibited activity. But how would the Commission expect the Administrator to prove this was not the case prior to issuing funding? Would the Administrator be able to accept a statement from the applicant that they did not have an inappropriate relationship with the service provider or would the Administrator be tasked with investigating the relationships to determine if an inappropriate relationship existed? Would the Administrator have a set of questions that could properly test for this?

The Commission may want to consider providing a list of prohibited activities along with a framework of activities that would result in violation of the program's competitive bidding rules. The framework would provide a "catch all" for inappropriate behavior not specifically listed. If the Commission is looking for ways to incorporate this list but still maintain a reasonable level of simplification in the application process, the Commission may want to consider allowing self-certification to be sufficient for meeting these requirements prior to funding. If so, these items could be added to the certifications listed on the Form 470 and 471 for the applicants and added to the Form 473 (Service Provider Annual Certification Form) for the Service Providers. In order to avoid confusion on review and minimize the increased administrative burden, program reviewers and auditors would need to have clear instructions as to how to evaluate compliance with each item listed.

Of the list provided for comment regarding "a potential financial interest", we agree with first 5 items listed. However, the item "Once a contract for products or services is signed by the

applicant and service provider, a different service provider may not circumvent the bidding process and offer a new, lower price for the same products and services” would cause a lot of problems since we see this happen frequently due to the time delay between filing the Form 471 and receiving funding. Prices may actually drop during the time period and once funding is awarded, we do see applicants change providers to get a lower rate when they are actually signing up for service. For example, long distance rates may be 5 cents per minute from a provider who submitted a bid during the 28 day bidding period in November, but when the school receives their funding letter eight months later in July and is ready to sign up for service, they may have a local buying group now offering long distance at 2 cents per minute. If the Commission prohibits this activity, then applicants will be forced to pay for the higher rate.

Regarding the FCC Form 470 items, we have concerns with the following:

1. *An applicant using the FCC Form 470 bidding process must describe the desired products and services with sufficient specificity to enable interested parties to submit responsive bids.* This requirement would be hard to objectively review since the type of applicant and the project will vary greatly. For example, a small school with 50 students could specify “1 voice line “ and “1 fax line” . However, a large district with multiple buildings and sites would have a challenge to specifically list the exact quantity since lines are added and removed monthly. The other problem we see with being overly specific is that it can easily eliminate cost effective solutions that the applicant did not think of. For example, a provider may be able to provide voice to the classrooms utilizing trunks instead of individual phone lines for a reduced cost. If the applicant specified x # of phone lines, but ended up selecting the solution for 1 trunk would they be in violation?
2. *An applicant must identify the correct category of service on the FCC Form 470, e.g. telecommunications, Internet access, or internal connections so that it can receive bidders for the services it seeks.* The Commission stated earlier that one of the problems applicants have is with denials of funding for not properly entering information on the form 470. Another stumbling block for applicants is with converging technologies in Priority One services and maintenance services that are bundled with internal connections in Priority Two services. There often is not a clear distinction between categories so the applicant must enter items under both categories the service might be classified under or risk denial of funding. Excellent examples of this include cell phone service and Voice Over IP service. Even though the program rules recognize the different categories, **it makes more sense to combine the categories for Priority One services and Priority Two services on the Form 470, then allow the applicant to break them out on the Form 471.** Another idea for increasing the effectiveness of the Form 470 would be to provide a drop-down for type of service utilizing the organization of services listed on the eligible services list and always

providing an “other” option. This would solve the problem that service providers have of needing to sort through Forms 470 for services they want to bid on and would provide the applicants with a way to indicate the services requested which would automatically be recognized by the Administrator as belonging to an allowed category of service. Later in this document, we discuss our recommendation to eliminate the Basic Maintenance Category of service altogether which would eliminate this problem for Priority Two services.

3. *A service provider may provide information to an applicant about products or services – including demonstrations – before the applicant posts the FCC Form 470, but not during the bid selection process.* This requirement would definitely set up applicants for failure as service providers send blanket bids and marketing information to applicants throughout the E-rate filing process. Some service providers may go onsite to a school district during the bidding period and be told that they may not communicate with the purchasing agent or E-rate contact. If the provider came on site, would the applicant be in violation even if they followed their competitive bidding rules and told the provider they had to leave? How would the administrator know they didn’t talk to someone inappropriately if they weren’t observing all interactions of the provider at the district? Since libraries and schools are public entities, providers have the ability to walk onto the property even if the applicant is fully in compliance with competitive bidding rules. Since the Commission most likely does not want to get involved in the minutia of state and local procurement activities, this requirement would be counter-productive from an administrative standpoint. In order to review this one, you would have to collect all emails, correspondence, and activity that takes place among all service providers and all applicants and carefully review all activity for proper compliance plus review all within the bidding timelines for each individual Form 470 and RFP. We believe this requirement would result in a very high rate of denials and confusion for applicants and service providers.

We support the other three items as follows, as they clearly would reduce waste, fraud, and abuse in the program:

- ✓ *Only an applicant or an authorized representative of the applicant can prepare, sign and submit the Form 470 and certification*
- ✓ *An applicant cannot list a service provider representative as the FCC Form 470 contact person and allow that service provider to participate in the competitive bidding process. **We recommend adding “or alternate contact person”***
- ✓ *A service provider may not help an applicant prepare the FCC form 470 or participate in the bid evaluation or vendor selection process in any way.” **We recommend adding “prepare the technology plan”***

Due Process-Provide for Process for receiving funding on limited Priority One services during probationary period.

To ease undue hardship for applicants, we recommend that the Commission develop a clear due process for applicants and service providers who find themselves under investigation for reported violation of the program rules. One of the complexities of the program arises when a service provider or other participant is under investigation for violation of program rules. Current procedures do not allow communication of this information to applicants whose funding may be held for extended periods of time. This is so common, that the funding on hold predicament is called “being in the black hole.” The applicant has no information as to why their funding is being held except for a statement “it is under review” or “it is under special compliance review.” The service provider also may not know of the accusations and may not have any idea why the funding associated with their SPIN is being held. We understand that funding for the year(s) of the suspected violation makes sense, but it would greatly benefit the program and provide stability to the schools and libraries affected if the Commission had a clearly defined process for service providers and applicants to follow during a probationary period (1-3 years for example) so they can as a minimum receive timely funding for their recurring priority one services. For example, a school district had a suspected service provider violation in FY 2003. All funding for the school district has been on hold beginning with FY 2007. This very small school district (477 students) had installed one T-1 at their district to provide for Internet Access that they could not afford without E-rate discounts. The teachers depend on access to the Internet to properly teach the necessary curriculum and the state department of education requires online testing and reporting. The district is in financial difficulties due to the E-rate hold for the last three years. Both the individual at the school who was involved in the purchase of the priority two funding in FY 2003 and the service provider are no longer associated with the district. The funding hold is causing undue financial hardship on the district and the program Administrator is unable to provide the district with an expected time frame as to when funding may resume. In order to provide stability in the program and minimize the fear applicants have installing services that make them financially dependent on continued E-rate funding, we recommend that the Commission establish a process whereby the applicant could continue to apply for and receive funding on their normal, recurring Priority One services even though an investigation is taking place on a prior year violation.

Application Process Streamlining

Online Data Entry for all Forms

We fully support the proposals for an improved online system that provides applicants with the tools and access to data necessary to participate more effectively and efficiently in the program. The online BEAR program has significantly simplified the reimbursement process. The ability to

load Block 4 from previous application data was a significant improvement in simplifying the Form 471 application process. We agree USAC should move to have everything on-line, but they need to solicit input from the user community regarding the features and function of the USAC tools.

We agree with comments submitted by E-mpa™ that it would not make sense to require that all applicants file online.

Addition of Consultant Information to Form 470 & Form 471.

We agree with the comments submitted by E-mpa™ regarding the proposed changes to the Form 470 and 471 to include data fields to enter the name and contact information of the consultant who assisted with completion of the form.

We support a consultant registration process and recognition of qualified consultants by the FCC. However, we are not sure if, in reality, the registration idea will be successful since there are such a wide range of consultants involved in the E-rate filing process.

Throughout the application process, applicants may work with a variety of “consultants” from technical consultants, procurement consultants, state e-rate coordinators, education service center e-rate consultants, and e-rate consultants who may provide consulting services for just one area of the process such as development of the technology plan and RFP, or only the Form 471 filing. Some consultants work only with service providers and others assist applicants only with the reimbursement process. Some consultants do assist applicants with the entire process which is the only type of consultant that would “fit” the registration idea suggested by the revisions on the Form 470 and Form 471.

If the applicant is able to clearly define a “consultant” to list on their application, what happens when the applicant changes consultants in the next year? Does the previous year consultant continue as the “consultant contact” on the form? What if the consultant is also working for a service provider but only assists with the Form 471? If the consultant is listed on the Form 471 and not the Form 470 since they did not assist with the Form 470, will the applicant’s application still require further review due to the risk of a competitive bidding violation? What would be the penalty to the applicant if they chose not to list the consultant on the form? If the consultant is the authorized contact for the district, do they fill in their information as both the authorized contact and the consultant?

As a founding member of the E-Rate Management Professionals Association (E-mpa™), we spent several weeks discussing this issue. We discussed the “pros and cons” of the Commission

including a registration process for certified E-rate professionals and recognition of those consultants who have agreed to abide by a code of ethics, pass a proficiency exam, and meet experience requirements for certification. E-mpa™ is finalizing certification requirements with initial certifications being issued in 2010-11. We would like the Commission to consider recognition of the Certified E-Rate Management Professional and consider ways in which this certification may benefit the program.

Simplify the Form 470 by allowing applicants to list services under Priority One Services OR Priority Two services and remove requirement to select only one category of service.

Even though the program rules recognize the different categories, it makes more sense to combine the categories for Priority One services and Priority Two services on the Form 470, then allow the applicant to break them out on the Form 471. Another idea for increasing the effectiveness of the Form 470 would be to provide a drop-down for type of service utilizing the organization of services listed on the eligible services list and always providing an “other” option. This would solve the problem that service providers have of needing to sort through Forms 470 for services they want to bid on and would provide the applicants with a way to indicate the services requested which would automatically be recognized by the Administrator as belonging to an allowed category of service. Later in this document, we discuss our recommendation to eliminate the Basic Maintenance Category of service altogether which would eliminate this problem for Priority Two services.

Discount Matrix Streamlining

Simple Average

The Commission proposes to revise the discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district (“NSLP SA”) rather than the weighted average for each school building. The simple average would be calculated by dividing the total student enrollment of the district by the total number of students eligible for the free or reduced lunches provided by the National School Lunch Program (NSLP).

After careful consideration of this proposal, we do not believe the proposal would result in simplification of the application process as discussed below:

Removes Incentive to Install priority two services for low income areas. In urban areas, large districts with multiple entities will have some entities located in low income areas and some in high income areas. The current discount calculation – by site – provides incentives for the urban district to install priority two services at their low income sites first (80 - 90% sites). If an

average rate is used, there would be no incentive for the large urban district to install priority two services in the low income areas first.

Reason for simplification in this area is not as critical as other areas. The administrative burden of entering all sites in Block 4 of the Form 471 has been greatly decreased with the bulk upload tool and the ability to copy Block 4 from a prior year application to the current year application. As mentioned earlier, the Commission could simplify the application process related to the discount calculation by limiting duplicative review of state-verified NSLP data to only those instances in which there is a discrepancy between state reported and applicant-reported data. This does not mean that the state data would take precedence over the applicant's self-validated numbers. The intent would be that the state data would not need to be verified if the applicant's data is in agreement. The applicant should be able to continue to self-validate their enrollment and low income data.

Reporting by site will still be required for compliance with program eligibility; loss of detailed NSLP data by site could significantly complicate review and eligibility verification by Administrator. For audit and review purposes, entering the data by site assists reviewers in more easily locating discrepancies between state-validated data and information entered by the applicant. It is much harder to locate a discrepancy in a grand total than when you have site by site data to compare to. Also, many schools have to use point in time counts or alternative discount mechanisms to determine the E-rate discount for non-traditional sites. Reporting the data by site allows the applicant to more easily indicate to the Administrator which data is publicly reported and validated by the state and which data may need further supporting documentation.

The program Administrator uses data reported on the Block 4 to determine E-rate eligibility for each site. Information provided on the individual site level may include whether or not the site is a non-instructional facility, Pre-K, Adult-ed, or juvenile justice site.

Supported services may be provided for an ineligible entity which must be cost allocated out of the amount requested. The NSLP data reported by site provides for a way to cost allocate the ineligible entity as a % of the total. Without the NSLP data reporting by site, applicants with services provided to ineligible entities will need to provide additional documentation in order to determine the correct amount to cost allocate.

Allow Consortiums to use simple average for member districts. We definitely agree that the Block 4 calculations for consortiums are extremely complicated and burdensome. We would highly recommend allowing consortiums to enter member districts as a “site” by entering total enrollment and total # of NSLP students. Allowing simple averages for each member district would be similar to the treatment of libraries and shouldn’t make a significant difference in funds requested.

Rural Definition. Since a new rural definition is necessary due to ORHP no longer using the definition adopted by the Commission, we support use of the rural definition standards that ORHP has adopted: Rural Urban Commuting Code System (RUCA). The RUCA classification is already used by the Universal Service’s Rural Healthcare program and is a stable method for determining rural classification. The NCES information is good in theory since it is education based, but in reality we have found it is very difficult to add new sites to the database so the entity information is frequently outdated and would be cumbersome to rely on for purposes of the E-rate program. The RUCA method is much better than the NCES method since it defines a region instead of a specific school, thus any school within the geographic region could be classified without the need to add the school itself to the database.

Consider elimination of Rural/Urban Classification. We recommend that the Commission evaluate the effect on the program of eliminating the Rural/Urban classification. Typically we have found that rural schools tend to have higher NSLP % so they already receive the higher E-rate discounts. The need to determine the correct classification does add a layer of complexity and may not actually make a significant difference.

Comments Regarding Providing Greater Flexibility to Select Broadband Services

We agree with the comments submitted by E-mpa™ regarding the following proposals:

Wireless Services Outside of School

This proposal is a good idea, but other needs in the program should be addressed first. With finite funding in the E-rate program, this would take additional funds from other areas that are not currently being met especially in the area of priority two funding.

Expanding Access for Residential Schools that Serve Unique Populations

We agree this is a reasonable proposal but the Commission will need to be very specific in defining what special circumstances must be in place to provide for funding the residential areas of schools.

Two of our client applicants are residential schools. Both are serving special populations of students who do not go home at night. In both cases, they are also in rural areas without any Internet Access other than that provided by the school. Both have been very diligent in adhering to the rules against extending Internet Access to the individual residential rooms. The students can't go 'home' to do their homework but have to stay in a classroom that is accessible to get any extra lessons accomplished. These populations of students have enough to deal with already, living miles away from family and friends and, in the case of the School for the Deaf, dealing with a disability as well.

There is a significant difference between funding a residential facility whose students cannot leave (ie, a school for disabled students which uses E-Rate funding to provide internet and telecom services to their students who cannot leave their beds or cannot leave their room because of their disability) and funding a residential facility whose students choose not to leave. The FCC would have to define, "Unique Populations."

Targeting Support for Broadband Services

We recommend no change in priority funding from basic services to advanced services. While we agree that the Commission should implement policy decisions to promote access to advanced services in rural communities, the network build-outs will take time. The Commission should not further disadvantage rural communities with limited access, by reducing or eliminating E-Rate funding for their current access.

Comments Regarding Expanding the Reach of Broadband to the Classroom

Predictable Internal Connections Funding for More Schools & Libraries

Per Student Cap The Commission Proposes to set aside a certain amount of the \$2.25 billion cap that would specifically be dedicated to internal connections, even if it means not funding all Priority 1 requests.

We recommend not implementing a cap as described by the Commission. Such a cap has the potential to have the opposite effect by large schools requesting the cap whether they need it or not while small schools, which make up the majority of the applicants, would miss out completely. The cap as described by the Commission would hinder the program objectives for the largest number of applicants in the country – the small schools.

Set Aside for Internal Connections

The Commission's recommendation for setting aside a portion of the E-rate funding cap to be used only for Priority Two ("P2") services would allow for P2 funding regardless of P1 so would fund earlier and would guarantee funding in this level. However, with the higher and higher demand for increased bandwidth circuits to meet educational needs, such a set-aside, *without additional funding*, might have the exact opposite effect by denial of funding for priority one services to an applicant who has all the equipment they need, but cannot afford the monthly, recurring cost of their Internet Access and wide area network without E-Rate funding.

The priority funding structure originally set in place for the E-rate program recognized that the first priority of the program was to fund Internet Access and Telecommunications services and if funding was still available to provide funding for Internal Connections. As long as the program is working with a limited amount of funding, we do not recommend setting aside funding for Priority Two services which in turn would reduce the funding available for Priority One Services.

We do support this concept if there is plenty of funding to meet BOTH the demand for priority one services and a base level (set aside amount) for priority two services. Unfortunately, the level of the funding currently in the program does not support this concept.

Threshold for Priority Two Funding

In response to the Commission's request for comment on the appropriate threshold for any revised methodology for internal connections funding, we have the following comments.

Reduce Maximum Discount for Priority Two Services. We recommend that the Commission consider reducing the maximum discount rate for Priority two services to 80%. This proposal was originally recommended by the Waste Fraud and Abuse panel several years ago. If the applicant has to invest a greater share of the cost and therefore require more investment of local dollars, then the applicant will have more incentive to seriously consider whether they really need products and services and ensure they are implementing the most cost effective solution which in turn will reduce waste, fraud and abuse.

The Commission needs to consider that a reduction in the funding discount rate for the highest NSLP band (75-100%) can have the unintended result that the most economically disadvantaged districts will not be able to pay the additional non-discount share and therefore will not be able to

afford to install the needed products and services with the higher non-discount portion. We therefore recommend that the Commission not reduce the maximum discount below 80%.

Revised Discount Matrix

We recommend that the Commission only make one change to the discount matrix at a time and evaluate the result before making additional changes. We are recommending reducing the maximum discount rate for priority two services to 80% . This one change could make a significant difference in funding and therefore we don't think it would be wise to make additional changes until the Commission has a chance to properly evaluate the effect on the program of the change in the maximum discount rate.

In their E-Rate NPRM Comments, E-rate Provider Services, LLC³ ("EPS") proposed using a discount matrix (no rural/urban classification) based on the simple average for the district (total # NSLP students divided by total enrollment). We applied EPS' Discount Matrix to a group of 179 school districts with an average shared discount of 82%.

DISCOUNT MATRIX A (Suggested by E-rate Provider Services)		
NSLP Simple Avg %	P1	P2
1%	30%	30%
10%	40%	40%
20%	50%	45%
30%	60%	50%
40%	65%	55%
50%	70%	60%
60%	75%	70%
65%	80%	72%
70%	82%	74%
75%	84%	76%
80%	86%	78%
85%	88%	80%
90%	90%	85%

DISCOUNT MATRIX A RESULTS	
# Applicants	179
Avg Shared %	82%
Avg P1 % Reduction	4%
Avg P2 % Reduction	11%
P1 funding-original	16,624,922.95
P2 funding- original	14,731,886.56
P1 funding- new matrix	15,988,871.63
P2 funding - new matrix	12,621,468.45
Reduction in P1 Requests	636,051.32
Reduction in P2 Requests	2,110,418.11
Avg per applicant	15,343.40
Extrapolate to Nation wide 2009 funding:	
P1 Funding	1,617,285,165.70
P2 Funding	1,115,058,236.58
Reduction in P1	58,186,125.51
Reduction in P2	126,954,675.20
Total Reduction	185,140,800.72
% of P2 funding	17%

The application of the new discount matrix resulted in an overall reduction in P1 commitments of 4% and P2 commitments of 11%. By extrapolating this reduction to 2009 nationwide funding, total

³ Comments of E-Rate Provider Services, LLC , FCC 10-83, GN Docket 09-51, CC Docket 02-6, Received 7/1/2010.

reduction in funding would be \$185 million. One could assume that the additional funds could then be redistributed to additional school districts seeking priority 2 funding.

Let's compare this to a more simplified matrix similar to the current discount matrix, again eliminating the rural/urban designation.

DISCOUNT MATRIX B		
NSLP SA	P1	P2
0%	20%	25%
1%	40%	50%
20%	50%	60%
35%	60%	70%
50%	80%	80%
75%	90%	80%

DISCOUNT MATRIX B RESULTS	
# Applicants	179
Avg Shared %	82%
Avg P1 % Reduction	1%
Avg P2 % Reduction	4%
P1 funding-original	16,624,922.95
P2 funding- original	14,731,886.56
P1 funding- new matrix	16,456,508.25
P2 funding - new matrix	13,827,313.16
Reduction in P1 Requests	168,414.70
Reduction in P2 Requests	904,573.40
Avg per applicant	5,994.35
Extrapolate to Nationwide 2009 funding	
P1 Funding	1,617,285,165.70
P2 Funding	1,115,058,236.58
Reduction in P1	19,154,438.83
Reduction in P2	42,048,285.46
Total Reduction	61,202,724.29
% of P2 funding	5%

Using the above discount matrix B on the same set of 179 applicants, the results are as shown above. Reduction in P1 requests would be approximately 1% and P2 requests would be reduced by 4% . Extrapolating the reductions to nationwide 2009 funding, the result would be an overall reduction in funding of \$61 million which could then be redistributed to applicants for priority two funding.

It is enlightening in this analysis to review the affect on an individual district. If the Discount Matrix A recommended by E-Rate Provider Services is used for McAlester ISD who requested priority two funding of \$957,155.50, their reduction in funding would be \$203,904.66. But with application of Discount Matrix B, their reduction in funding would be \$54,030.92. Applying Discount Matrix C below, McAlester's reduction in funding would be \$173,675.36.

Let's now look at designing another matrix based on the simple average and removing the rural/urban classification. This discount matrix includes multiple bands which will assist the Administrator in having less applicants in any one discount band. The additional bands allow

for funding to be issued at the various levels in priority even though the E-rate discount is the same.

DISCOUNT MATRIX C		
NSLP SA	P1	P2
0%	20%	20%
1%	30%	30%
10%	40%	40%
20%	50%	50%
30%	60%	60%
40%	65%	65%
50%	80%	70%
60%	80%	70%
65%	80%	70%
70%	80%	70%
75%	90%	80%
80%	90%	80%
85%	90%	80%
90%	90%	80%

Results using Discount Matrix C	
# Applicants	179
Avg Shared %	82%
Avg P1 % Reduction	1%
Avg P2 % Reduction	9%
P1 funding-original	16,624,922.95
P2 funding- original	14,731,886.56
P1 funding- new matrix	16,592,863.40
P2 funding - new matrix	12,835,455.31
Reduction in P1 Requests	32,059.55
Reduction in P2 Requests	1,896,431.25
Avg per applicant	10,773.69
Extrapolate to Nation wide 2009 funding	
P1 Funding	1,617,285,165.70
P2 Funding	1,115,058,236.58
Reduction in P1	12,378,104.34
Reduction in P2	105,276,448.03
Total Reduction	117,654,552.38
% of P2 funding	11%

Applying Discount Matrix C to our sample set of 179 school districts, P1 funding remains approximately the same (1% variance) and P2 funding is reduced by approximately 9%. Total additional P2 funding for redistribution based on extrapolation to 2009 funding would be \$117 million.

The advantages of Discount Matrix C is that it keeps P1 funding constant and allows districts at lower NSLP SA % to receive significant E-rate discounts (70-80%) on their priority two services. Also, the additional discount bands allow funding to be issued in a priority method (higher low income % bands receive funding first).

Each method shown above should be able to enable more districts to obtain funding for internal connections. However, as shown on the effect of just one district (McAlester ISD), the burden on an economically disadvantaged district to secure funding for the additional non-discount share may preclude them from utilizing the E-rate funds. We recommend that the Commission only make a slight change in the discount matrix and then carefully evaluate the effects.

As discussed earlier, we recommend that the Commission consider making only one change to the discount matrix at this time which would be implementing the least disruptive option of

adjusting the existing discount matrix by reducing the discount for the top NSLP band (75-100%) to 80%.

In FY 2009, nationwide funding for priority two services in the 90% discount band was \$497,111,458.44 (as of July 8, 2010). If the top funding level for this band was reduced to 80%, an additional 10% or \$49 million would be available for redistribution to additional school districts seeking priority 2 funding.

If the top band were reduced to 70%, an additional \$99 million would be available for redistribution for priority 2 funding. This would be more aggressive and in our opinion may have the adverse affect of causing the schools and libraries who most need the E-rate discounts to not be able to take advantage of the program due to the higher non-discount share amount.

By making only the one change: reducing top discount from 90% to 80% for priority two services requested in the NSLP 75-100% band, we believe the Commission will have made a positive step in providing additional priority 2 funding for more applicants. Additional changes could be evaluated after the effects of this change and others made by the Commission are implemented.

Eliminate the 2 in 5 Rule

The Commission proposes to eliminate the two-in-five rule, and require schools to submit applications for internal connections by school district, not by individual school. Schools that operate independently from a school district, however, such as private schools and some charter schools, should still apply for discounts individually.

The Two-in-Five rule adds significant layers of complexity to preparing and submitting applications. The primary reason is that priority two funding occurs late into the next funding year or, in many cases, long after the next year's applications are submitted.

Example: In December, 2009, applicants who had filed for priority two funding for FY 2008 had not yet received their funding letters for FY 2008 nor for FY 2009. When the FCC announced the carryover of \$900 million in unused funds to FY 2009, PIA reviewers were notified to review FY 2009 priority two requests down to the 80% discount level. At the same time, the applicants were filing their FY 2010 E-rate Forms 470 and preparing to request priority two funding for FY 2010. These applicants were asked by PIA reviewers to cancel their FY 2008 funding so they would not be 2 in 5 limited and would therefore be eligible for FY 2009 funding. This was extremely confusing to the applicants who were making decisions regarding 2 in 5 rule not only between FY 2008 and FY

2009, but also how that would impact 2010 possible funding. This created significant confusion for the applicants and quite likely they made some quick decisions they may have regretted later. All of this was also very time consuming for the program reviewers.

Due to the unpredictability of priority two funding and the new 2 in 5 rule, we have seen quite a few districts simply ask for three years of funding in one year, then keep applying each year until they finally get funded. This does have the intended result of the 2 in 5 rule in that the school district receives funding in 2 out of every 5 years, however we have not seen it have the effect that the Commission originally expected of the lower income districts at the higher discount levels taking less of the funding and thus increasing the availability of priority two funding to more eligible schools and libraries on a regular basis. For example, a district will request enough funding to meet their technology needs over the three year period so instead of using \$10,000 each year they are using \$30,000 in one year and \$0 in years 2 and 3, so the total amount of funds used by the low income district is the same. The \$30,000 request is most likely reasonable and in line with their technology needs. So instead of installing equipment over the three year period, they just do it all in one year and use maintenance funding for years 2 and 3.

We recommend that the 2-in-5 rule be removed but that the Commission retain the current method of filing applications either by district or by site.

Application by School District

We do not recommend requiring applicants to apply by school district and recommend that they continue to be given the option of filing either by district or by individual site.

Eliminate Basic Maintenance Category of Service AND continue to provide funding for limited basic maintenance services in the Internal Connections Category of Service.

We recommend eliminating the basic maintenance category of service but including limited funding for manufacturer's warranties in the Internal Connections category of service.

Due to the limited funding in the program and the Commission's desire to expand distribution of E-rate funding for internal connections, we recommend elimination of maintenance services with the exception of manufacturer's warranties.

Eliminate Basic Maintenance Category of Service

In FY 2003-04 the Commission changed the nature of Basic Maintenance to be considered a recurring service that must be used from July 1 – June 30 of the funding year. This concept would work very well if funding for basic maintenance was issued by July 1 of the funding year. The

reality is that funding is frequently not issued until the end of the funding year or even after June 30 of the funding year. Since many applicants depend on E-rate funding to afford the basic maintenance services, they are not able to purchase the services until funding is received. If funding is not received until May, for example, the applicant does not have the opportunity to receive the funded maintenance services.

Another problem with the July 1 – June 30 characterization for basic maintenance service is related to warranties. When an applicant purchases a new piece of equipment the equipment will typically include a one year warranty that starts the date the equipment is installed. Since internal connections are granted an extension until September 30 of the funding year and may receive additional extensions due to late funding or changes in the provider or service, it is not uncommon for new equipment purchases related to E-rate funding to be installed well after June 30 of the funding year. When this happens, the funding for the 1st year of warranty associated with the equipment can no longer be used and the much-needed funding cannot be utilized. In this same situation, the applicant also loses out on maintenance funding for the year in which the equipment was installed because they had no way of knowing when they filed the subsequent year's E-rate application that they would be installing the prior year's equipment late and so they would have omitted filing for maintenance in the second year.

The method used to treat basic maintenance in the first five years of the program makes much more sense and better reflects the reality of internal connections and basic maintenance. When basic maintenance is considered a non-recurring service, it can then follow the same timing as the E-rate equipment it is provisioned to maintain. Additionally, if the applicant receives late funding, they are able to utilize the maintenance funding when it becomes available.

Limit Funding for Basic Maintenance Services to Manufacturer's Warranties

We agree with the Commission that funding for basic maintenance services needs to be limited to the most basic level.

In our opinion, the E-rate program can be more effective in meeting its goals by providing additional funding for new products and services instead of providing funding for maintenance of existing equipment.

We fully understand the importance of maintenance services for E-rate eligible equipment as these services are necessary for the on-going operations of the network and protects the applicant's investment. These services, however, can be effectively provided by school or library personnel and remote management services. The area of maintenance services has the highest risk of waste,

fraud and abuse because there is not an objective measure of what the costs should be, and from a program administrative standpoint, it is very hard to determine which services are being properly provided and which services are simply ways “to work the system.” For example, misuse of maintenance funding can occur when outsourced maintenance services are replacing services that were previously provided by school or library employees. A school technician can leave employment from his school, obtain a SPIN, and then provide E-rate discounted maintenance services to the district where he was formerly employed. A service provider can subcontract E-rate discounted maintenance services to a school employee who was previously paid for providing these services by the school. These situations are very hard for program reviewers to detect and the administrative burden to review the various areas of waste, fraud and abuse in the maintenance services area is very high as a result.

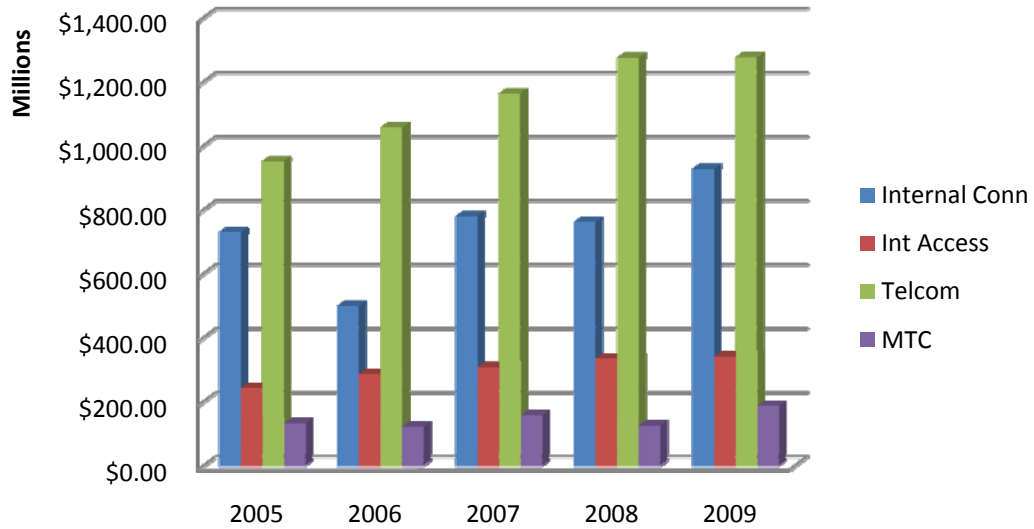
- Manufacturer’s Warranties

Manufacturer’s warranties provide for replacement of equipment due to manufacturer’s defects. Additional protection can be purchased to allow for replacement of equipment that breaks regardless of the cause. The price of these warranties is set based on the market and are not influenced by the E-rate program, however the Commission could have procedures in place to limit the cost to the original cost of the equipment. We recommend that manufacturer’s warranties continue to be eligible for funding as basic maintenance service in the Internal Connections Category of Service. As stated earlier, the only way to properly provide E-rate discounts for warranties is to allow the service to be considered as non-recurring services and eligible for extensions afforded to internal connections.

- Eliminate Basic Maintenance Category of Service

The following table shows E-rate funding commitments by category of services for funding years 2005-2009. Basic Maintenance of Internal Connections is a very small portion (6%) of the overall funding and yet it most likely is requiring a large portion of administrative costs to review and process the basic maintenance funding requests.

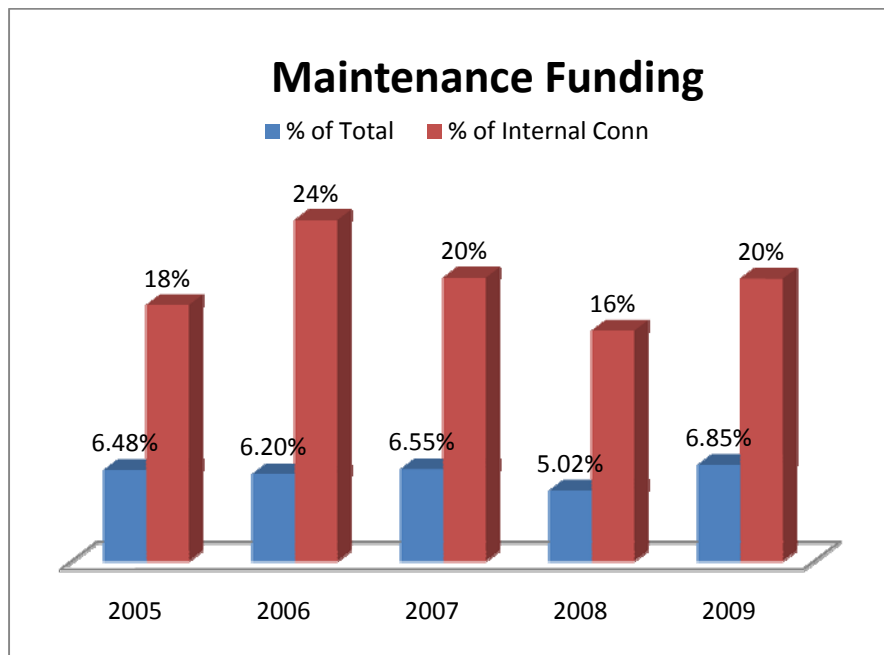
E-rate Funding by Category of Service



Funding Year	MTC Funding Commitments
2005	\$133,437,193.49
2006	\$121,711,407.26
2007	\$157,865,255.36
2008	\$125,345,455.94
2009	\$187,153,591.13

Since 2005, Maintenance funding has ranged from \$121-\$187 million per funding year.

As indicated in the following table, maintenance funding is only approximately 6% of total funds committed each year and approximately 20% of total internal connections funding.



We believe moving these funds to the internal connections category of service and limiting basic maintenance services to only manufacturer's warranties will provide additional funds for schools and libraries to use for purchase of needed products and services and will make a significant impact on simplifying the program from a program administrative standpoint as well as providing greater distribution of priority two funding.

Indexing the Annual Cap to Inflation

The Annual Cap of \$2.25 billion is significantly below what is required to meet the demands of today. Current demand is approximately \$4 billion annually to meet the minimum needs of providing access to the Internet and advanced telecommunications to schools and libraries.

We fully support any increase in the fund. As the demand has continued to grow and has stayed consistently in the \$4 billion range, we encourage the Commission to review the allocation of all Universal Services funds and increase the funding cap for the Schools and Libraries program whenever possible.

Process for Disposal of Obsolete Equipment

We recommend adopting the recommendations as proposed by the Commission.

E-RATE ELIGIBLE SERVICES NOTICE OF PROPOSED RULEMAKING⁴

Released December 2, 2009

We support the comments submitted by E-mpa™ as follows:

Provide for funding Anti-Virus, Anti-Spam and Filtering Software

Along the same line of reasoning for providing E-Rate funding for firewalls, we also support eligibility for E-rate funding for Anti Virus, Anti-Spam and filtering software as these are critical to protecting data as it is transmitted to the classroom or library.

Cell phone applications.

We support the Commission's recommendation to cost allocate separately priced applications for cell phones. However, if the cost of the allocation is not separately priced, it needs to be

⁴ *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order and Further Notice of Proposed Rulemaking, FCC 09-105 (rel. Dec. 2, 2009) (*ESL Order and FNPRM*).

considered ancillary use. For example, if GPS functionality is priced separately, the separate cost of GPS functionality would be removed as ineligible but if the GPS functionality is a standard with the phone such as the GPS capability of the iPhone, then it would not be necessary to determine a price of the GPS functionality and have it cost allocated.

Clarify “Unbundled Warranties.”

The Commission stated that “we find that unbundled warranties are not services eligible for E-rate discounts as basic maintenance of internal connections.” The Commission further explained, “we do not add unbundled warranties to the ESL at this time because we find that warranty may be duplicative of an applicant’s maintenance agreement or contract.”


The explanation of exactly what constitutes an “unbundled warranty” is extremely confusing and needs to be clarified. There has been much discussion, contemplation and interpretation of exactly what the Commission is trying to say regarding “unbundled warranties.”


We heard one interpretation that an unbundled warranty is a manufacturer’s warranty for a piece of equipment that was not bundled with the sale of the equipment. If you have a break/fix agreement with your service provider for a piece of equipment and you also have a manufacturer’s warranty that was purchased to enable you to replace equipment that breaks for whatever reason, then the manufacturer’s warranty would be a duplicate cost and not eligible. However, if you have a break/fix manufacturer’s warranty and a maintenance agreement only for configuration and software updates for the equipment, then the manufacturer’s warranty is not duplicative and would be considered eligible.

We need the Commission to clarify what is meant by “Unbundled Warranties” and provide examples of when a manufacturer’s warranty is eligible and when it is considered an “unbundled warranty and therefore not eligible.

We appreciate the opportunity to submit comments for consideration by the Commission. The rulemaking proceedings conducted by the Commission to implement the National Broadband Plan's vision of improving and modernizing the universal service programs comes at a time when these resources are most needed by our nation's schools and libraries. Thank you again for the time and dedication you and your staff are devoting to these invaluable programs.

Submitted by:


Jane Kellogg


Deborah Sovereign

Kellogg & Sovereign® Consulting, LLC

1101 Stadium Drive, Ada, OK 74820

Phone: (580) 332-1444 Fax: (580) 332-2532

www.kelloggllc.com

July 9, 2010