

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

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In the Matter of)	
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Modernizing the E-Rate)	WC Docket No. 13-184
Program for Schools and Libraries)	
)	

**Reply Comments of the New York State Education Department
Regarding the Notice of Proposed Rulemaking (FCC 13-100)**

The New York State Education Department (“NYSED”) submits these Reply Comments in response to the FCC’s Notice of Proposed Rulemaking released July 23, 2013, designated FCC 13-100, seeking comment on prospective changes to modernize the E-rate program.

Table of Contents

Introductory Comments and Summary	2
School and Library Bandwidth Goals	3
Streamlining Program Administration	4
Budget Caps and Consortium Funding	5
Broadband Planning and Use	6
Electronic Filing	6
Funding Recovery Considerations	7
BEAR Reimbursements	7
Discount Rate Calculations under CEO	8
Document Retention and Audits	8
Conclusions	9

Introductory Comments and Summary

At the outset, NYSED wishes to express its strong support for the E-rate program and for the efforts made on its behalf by the Federal Communications Commission (“FCC”) and the Universal Service Administrative Company (“USAC”). From the program’s inception through the present, New York State E-rate applicants have been awarded funding of over \$4.25 billion in E-rate discounts. This funding has permitted New York schools and libraries to purchase and install technology and telecommunications equipment and services that otherwise would have been far beyond their financial capabilities. Even for our lower discount applicants, not qualifying for Internal Connections, we have seen how E-rate has encouraged early adoption of broadband Internet and other services.

New York welcomes the opportunity afforded by the FCC to contribute to efforts being made to modernize and further strengthen this valuable program. NYSED’s Reply Comments in this proceeding are intended to support, from a New York prospective, initial Comments already filed by the State E-rate Coordinators’ Alliance (“SECA”), of which NYSED is a member, and by E-Rate Central, who assists NYSED in its E-rate coordination efforts.

The following are the key points made in these comments:

- NYSED supports the broadband goals being widely discussed for schools and recommends the adoption of comparable goals for libraries.
- Consideration should be given to supporting affordable access to mobile Internet services to support 24x7 learning.
- Procedures must be developed to address “black hole” problems involving indeterminable delays.
- Consideration should be given to funding E-rate coordination at the state level.
- Budget cap proposals raise serious concern of adequate funding for all schools, libraries, and consortia.
- New approaches are needed to track and assess broadband deployment.
- Electronic filing is important for the efficient administration of the program, but should not be mandated.
- Under many circumstances, full recovery is an excessive penalty for funds disbursed in error.
- BEAR reimbursement should be made directly to applicants.

- Discount rate calculations for CEO schools should reflect the direct certification multiple used by USDA and USDE.
- The document retention requirement should not be extended to ten years.

School and Library Bandwidth Goals

NYSED notes that the bandwidth goals proposed in the E-Rate 2.0 NPRM, as well as those expressed by many other parties, do not always distinguish between available circuit broadband capacity and Internet access speeds. A large number of public school districts in New York have already interconnected their schools via fiber optic WANs. An increasing number have also interconnected their districts into regional, fiber-based, networks. Circuit bandwidth in these cases are usually 1 Gbps or higher. Internet access speeds over these circuits are more typically 10, 25, or 50 Mbps, but can usually be expanded as needs an economics dictate. Based on the growing needs of digital learning, including online assessments, NYSED supports the goal proposed by SEDTA and others to provide Internet speeds of 100 Mbps per 1,000 students within the next few years. This goal will need to be expanded to 1 Gbps within the following few years — a goal that needs to be continually monitored and adjusted to meet changing technologies and educational requirements.

The greater need in New York is for higher circuit bandwidth for smaller schools, both public and private schools, as well as libraries, to support a smoother transition to higher Internet speeds. New York's longer-term goal for library Internet access is 100 Mbps.

NYSED notes that on-campus access to adequate and affordable Internet access is one of two key educational needs. Off-campus access, particularly wireless mobile access, is also needed to support an increasingly mobile student and patron population for meet 24x7 learning goals (including student access to e-textbooks). New York's interest in this arena was fostered in part by the successful participation in the FCC's 2011 Learning on the Go pilot program by one of its needy districts, one of its Boards of Cooperative Educational Services (BOCES), and one of its regional library systems (the only library in the trial).

NYSED recognizes E-rate support for mobile Internet access may be constrained by current funding limitations. We urge the Commission to expand E-rate funding and to explore other Universal Service Fund options to support what we consider the other important telecommunications-related requirement, beyond broadband, of today's educational system.

Streamlining Program Administration

NYSED recognizes that a certain amount of complexity is inherent in administering a federal funding program such as E-rate to assure that funds are being utilized in a cost-effective manner by eligible entities for eligible purposes and to prevent waste, fraud, and abuse. In addition to the issues raised in this NPRM, we suggest two other areas for consideration, namely:

1. In addition to tracking statistics on broad E-rate processes such as application review, attention should be paid to "black hole" problems and to the lack of due process procedures for addressing these problems. A number of approaches to these problems were provided in a white paper filed with the FCC by SECA in 2011.

New York is particularly sensitive to these problems at both the large and small applicant levels. A number of its small private schools have traditionally used small independent vendors who, like the applicants, may lack full E-rate knowledge. This occasionally creates problems on specific applications which, while they are being resolved, has typically delayed action on all applications citing that vendor. For the duration, which often extends to multiple funding years, those applications are simply held in "Initial Review," without applicant recourse or explanation. From a total dollar standpoint, New York has been similarly disadvantaged by a USAC and FCC holdup of funding to New York City since FY 2011 affecting over a million students. This represents a significant portion of the State's annual E-rate funding.

2. Many states, New York included, expend considerable resources effectively partnering with USAC in the efficient processing of applications. In New York's case, this involves a separate E-rate website, regional training workshops, weekly newsletters, maintenance of special online databases for multi-location schools and NSLP data for CEO schools, PIA valuation services, etc. As occurs in other federal funding programs, NYSED believes that the FCC should give serious consideration to providing some funding for State E-Rate Coordinators.

Budget Caps and Consortium Funding

"NYSED is concerned with the attention on budget cap proposals being proposed by Funds For Learning (FFL) and the E-Rate Reform Coalition (ERC). We are particularly opposed to attempts paint New York City's funding requests — requests which have been thoroughly reviewed in numerous full-scale audits, and which have lately been driven by a lack of funding in prior years — as unfair. Our most serious concerns are as follows:

1. The budget caps proposed, with exception of one adjustment for schools in remote rural areas, do not reflect the actual differences in costs between different schools and locales. They do not reflect, for example, the high costs attributable to larges urban areas involving such factors as underground ducting, intra-building wiring costs in two to three decade-old schools, prevailing wage costs, etc. They do not reflect the initial infrastructure costs associated with new schools, including the needs of growing numbers of New York charter schools. And particularly, under the per-site proposal for libraries, they do not reflect the wide range of library needs from small libraries in upstate New York to the New York Public Library's flagship library branch on Fifth Avenue in New York City.
2. Broadband deployment in New York is critically dependent on the consortium bidding and E-rate funding of its Boards of Cooperative Education Services ("BOCES") and Regional Information Centers ("RICs"). NYSED views the FFL/ERC proposal to deal with consortia, by having each consortium member allocate a portion of its own budget cap to its consortium, as being both politically and administratively impractical. We also view the alternative of setting aside a portion of the Fund for state networks as problematical, in part because of a fear that New York's expanding de facto state network of interconnected and separately managed regional networks would not be eligible for a set aside.
3. NYSED shares the concerns expressed by SECA and others that the professed simplicity of implementing a budget cap system is naïve. While simple in broad concept, the FFL/ERC proposals would represent a major change in the way the program is administered. The real devil is in the details. Among other problems, the changeover could mean the loss of fifteen years of precedent with regard to many such details.

NYSED hopes and assumes that any move in this direction would be accompanied by a thorough analysis of the procedural details subject to a second Notice of Proposed Rulemaking.

Broadband Planning and Use

NYSED agrees that better data is needed on the status and cost of broadband deployment. Indeed, we would like to have such information available for our own State planning purposes. We are not convinced; however, that truly complete and useful data can be obtained either by collecting Item 21 attachments, as is currently being attempted by EducationSuperHighway, or by the modest, but administratively burdensome, changes proposed to FCC Form 471.

NYSED would prefer to see a more detailed and professional survey conducted every 3-5 years apart from the normal E-rate application process. Rather than requiring formal reviews or assessment on broadband needs — which would be a step backwards with respect to the narrowing of the technology plan requirement to Priority 2 services only — completion of the survey could be made a periodic condition for the next year of E-rate funding.¹

Electronic Filing

Electronic filing is important to the efficient administration of the program and is already in widespread use. For many users, online filing is the way to go. Still further improvements could be made, however, by developing an applicant filing portal (as long proposed by SECA) and by researching and adopting some of the techniques used in form preparation and document retention by the more E-rate sophisticated applicants and consultants.

Because the vast majority of forms are filed electronically, NYSED sees little need to eliminate the option of paper filing. In some cases, there are real advantages to paper filings for small applicants, with poor Internet access and/or who are more comfortable paper forms filed only once a year. Certain large applicants, with complex applications developed in connection with internal databases for both Block 4 and Block 5 data, may also find paper filings more convenient and fool-proof.

¹ Indeed, with a properly structured survey, the FCC might consider doing away the Priority 2 technology plan requirement entirely.

Just as importantly, the ability to file paper forms may be critical in periods of USAC system failure or redesign such as occurred during the recent update of the online filing system for the revised FCC Forms 472 and 474.

Funding Recovery Considerations

NYSED agrees that full funding recovery is an excessive penalty for funds disbursed in error under non-fraudulent conditions. COMADs, and the associated recovery of funds, are particularly troublesome for public budgeted schools and libraries. Being unbudgeted, a funding recovery is much worse than not having been funded in the first place.

Funding recovery is particularly nettlesome when it occurs as a result of what might arguably be deemed a USAC review error. A number of small private schools in New York are currently dealing with such an issue as the result of recent USAC decisions deeming certain telephone equipment to be either ineligible or redundant (it is not clear which) after years of approving charges on multiple applications for either this equipment's installation or its maintenance. A number of appeals on this issue are currently before the FCC.

There is a strong feeling within the applicant community that an applicant's exposure to any level of funds recovery under non-fraudulent conditions should be covered by some form of statute of limitations. As a result, and as one factor in determining a mitigated recovery amount, NYSED would suggest that percentage recovery amounts should decline over time to provide an increasing degree of applicant certainty (see also our discussion of record retention periods below).

BEAR Reimbursements

NYSED agrees with almost all initial NPRM responders that BEAR payments be made directly to applicants rather than being funneled through the service providers. As SECA has long

argued, this is not only a more logical practice, but it can be justified under the FCC current statutory authority.

Direct BEAR payments to applicants will speed reimbursements, simplify service provider accounts receivable and payable processes, and eliminate, or at least reduce, the need for the administratively burdensome Good Samaritan process.

Discount Rate Calculations under CEO

New York was in the second small group of states which became eligible under the USDA's Community Eligibility Option during the 2012-2013 school year, so its CEO schools had to use the previous year's NSLP data for their FY 2013 applications. For FY 2014, that data will be one year older. The three initial CEO states will be using data that is even older. By 2014-2015, CEO will become a free meal option for all states. Clearly, the use of historic NSLP data for E-rate purposes is unsustainable.

NYSED concurs with E-Rate Central's initial Comments that the FCC permit, at least in the short-term, use of the USDA direct certification multiple (currently 1.6x) as an alternative discount mechanism for CEO schools. Based on first year CEO data in New York, as E-rate Central indicated, use of the 1.6x multiplier yielded almost a 90% equivalency with the calculated E-rate discounts based on historic NSLP data. Standardizing on poverty statistics developed by USDA, and adopted by the U.S. Department of Education, is good policy.

Document Retention and Audits

NYSED agrees with almost all initial NPRM responders that the FCC's rule for E-rate document retention should not be extended from five to ten years. We note that the practical impact of the current rule effectively requires that records be kept at least 7-8 years from the date of the initial procurement cycle. A five-year extension would raise that to at least 12-13 years. New York State already has retention requirements for all major record types for its public entities which, in

most cases, are significantly shorter than ten years. Due to the pervasiveness of E-rate record types involving inventories, budgets, accounts payables and receivables, NSLP, staff training, not to mention actual E-rate forms, schools would have to develop and maintain separate (and, in some cases, duplicate) record retention practices in every key administrative area. This would be unduly burdensome.

Conclusions

E-rate is a valuable program, not only for the schools and libraries involved, but for the nation as a whole. NYSED commends the Commission and its staff for its diligent efforts to identify and address the vexing issues of E-rate program funding and complexity. As discussed throughout, however, we encourage the Commission not to hastily adopt new rules which, though simple and attractive in concept, would lead to increasingly confusing and burdensome procedures.

Respectfully Submitted by:

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