INTRODUCTION

The American Association of School Administrators (AASA), representing more than 14,000 school superintendents and local educational leaders, and the Association of Educational Service Agencies (AESA), representing over 550 educational service agencies throughout the country, would like to offer comment on the proposed changes by the Commission to the E-Rate program. Local school districts have recognized the role of technology in the modern classroom and the role that E-Rate has played in aiding connectivity. Specifically, meeting the mandates of No Child Left Behind (NCLB) is placing an even greater emphasis on distance learning and connectivity, especially in geographically isolated areas. AASA and AESA strongly believe that the E-Rate program has been primarily responsible for providing connectivity to thousands of school districts across the country. It truly is a telecommunications success story. However, steps should be taken to streamline the application process in order to make the program even more accessible to those school districts which need the discounts most.
Paragraph 10 – Administration of the Program: Accounting

It is imperative that the FCC take the lead in implementing a top priority of applicants—a permanent exemption to Universal Service Fund from the Anti-Deficiency Act. When this accounting rule was applied last year, it effectively stopped the operation of the E-Rate program. This disrupted the delivery of commitment letters last year and created enormous problems in planning as school districts were forced to prepare applications for next year when they had yet to learn their discounts for the current year. As school districts are relying on these funds, and most have budgeted E-Rate discounts, it becomes a financial burden to districts when there are no or late disbursements. When this happens, student learning is negatively affected.

It is also very unfair to USAC to be put into the time crunch of trying to process as many applications as possible prior to the exemption expiring. Another freeze would be devastating to the entire E-Rate program as applicants cannot depend on program credibility or continuity of funds. This is especially troubling for school districts that enter into multi-year contracts with providers. More districts that really need the discounts would discontinue their efforts of applying for funds that may or may not be there for students.

AASA and AESA strongly urge the FCC to support a permanent exemption of the Universal Service Fund from the Anti-Deficiency Act. This action would be consistent with many other government programs that have been exempted and in addition would recognize the unique funding stream provided by the Universal Service Fund.

Paragraphs 11 – 15 – Administration of the Universal Service Fund

On behalf of AASA and AESA, we want to applaud the proactive steps taken by USAC to become more “customer friendly.” This focus for USAC has markedly improved their performance and offered them additional guidance on what else should be done. We strongly support efforts by USAC to promote training of individuals in the E-Rate application process. These trainings should not always take place in Washington, D.C., but they should occur across the country. This will make it easier for smaller applicants to access the training and potentially participate in the program.
AASA and AESA support the current educational representation on the Board of Directors. We would encourage the FCC to increase this representation on the board to allow for the representation of different entities within the educational arena. For instance, it would be great to have a spot reserved on the board for a rural educator. This would help recognize the role that E-Rate has in rural education and also allow the board to have an expert who could help design outreach to ensure that more of rural America are applying for the discounts.

One of the improvements that AASA and AESA would support to the administering of the program would be to create an informal advisory panel to USAC and SLD. This panel would be filled with actual practitioners who have current experience of going through the E-Rate application process themselves. They would not replace the current SLD board, but rather act in an advisory capacity when application changes are pondered. This panel would be able to discuss current impact of the proposed changes on schools and libraries. They could also be available to advise SLD on timing issues, such as when crunch times fall over school holidays. This would help ensure that the educational background exists to streamline administering this program.

AASA and AESA urge the FCC to maintain the current Administrator set up. USAC has developed a system for implementing the programs under the Universal Service Fund. While the system always needs to be fine tuned, it seems better than taking the step back and creating a new Administrator. In addition, that process would eat up limited available funds in bureaucratic processes. We would also encourage that USAC conduct some outreach to hire additional staff that have educational backgrounds. Working with staff who understand the unique circumstances under which public schools operate could go a long way in streamlining the operation of the program.

Finally, we strongly believe that the Administrator must remain a non-profit entity. It seems wrong to imagine that the Administrator of the E-Rate program could be established in a way to make a profit off of public schools. This does not seem to be a good use of money from a program where demand consistently exceeds the available funding.
Paragraph 22 – Ministerial Errors in the Application Process

We applaud the FCC clarification between ministerial errors and intentional fraud. In many schools, E-Rate responsibility is assigned to district staff who are busy with NCLB and other state and federal initiatives, in addition to their regular duties. Despite their best efforts, data entry mistakes will occur from time to time. Unlike other federal programs where districts are permitted to correct those mistakes, mistakes in an E-Rate application frequently result in a denial of a discount application. In many situations, districts that could benefit the most from the E-Rate discounts, find themselves having to appeal funding decisions for simple oversights. These denials result in additional work and costs for SLD, in addition to the districts.

If major emphasis is placed on training and timely assistance to applicants during the application process, many of these errors could be reduced. For example, applicants should be able to contact USAC regarding the eligibility of a service or a specific piece of equipment and get a reliable and timely answer that withstands PIA scrutiny. In turn, FCC should be responsible for responding in a timely manner to USAC inquiries so accurate applicant responses are translated into error free applications.

One of the most frustrating things about submitting an E-Rate application is discovering a simple mistake was made - the wrong box checked, math errors, ineligible services that appeared on a phone bill, etc. Any improvements that do not “punish” districts for these simple mistakes, many of them clerical, would be a most welcome improvement. Administrative policies need not be codified, but clarified, and publicized for applicant use. Once codified, they become more difficult to change in an ever-changing technology world. Administrative policies are essential to the efficient operation of an organization; but should never be guarded from applicants, board members and governmental agencies. It is not fair for applicants to be audited on USAC’s non-codified procedures if they are not published. Additional regulations would not be essential to delineate USAC’s administrative functions.
Paragraphs 24 – 28 – Performance Measures

The Telecommunications Act designated the purpose of this program; with a statutory goal that E-Rate would provide discounts to eligible schools and libraries for “educational purposes.” To measure access to an evolving level of telecommunications services would be acceptable. Technological terminology quickly changes as advanced technologies come into place; therefore, precise definitions would need to be developed prior to determining appropriate measurement. Analyzing the effect and benefit of E-Rate is exceptionally difficult. In many regions, E-Rate emerged at the same time that many districts began to implement Internet access. We do know that in many rural regions, Internet access would not be possible or affordable without E-Rate discounts. Without Internet access, educational opportunities such as distance learning, on-line courses and streaming video would not be available to students in rural areas, where these services are the most beneficial.

Also in some regions, E-Rate has helped accelerate the deployment of broadband to an area. As schools increase their bandwidth using E-Rate discounts, their usage of on-line resources increases as well. As a result, more teachers are using electronic grade books, schools begin to webcast morning announcements and electronic communications improve between parents and school district staff.

For service providers, the increased bandwidth from schools helps establish and aggregate demand to upgrade their infrastructure, especially in regions where the school district is the largest consumer of bandwidth. As parents become more active in their children’s education through the Internet, the demand for broadband to the home is increased.

This was true for the Central Susquehanna Intermediate Unit (CSIU) which serves 5 counties. In 1996, the CSIU was trying to bring Internet access to rural school districts in its region and was served by 5 independent telephone companies. Internet access was provided primarily by dial-up accounts and some districts could not receive ISDN or T1 services because of the telco facilities in place. By leveraging a PDE Link to Learn Technology Testbed Grant and E-Rate discounts, they were able to aggregate demand to encourage an Internet Provider and local cable company to invest and build out a multi-county fiber ATM network in a primarily rural region. As a result, the deployment and
availability of broadband technology was greatly accelerated, improving the quality of life for the community, as well as creating an important economic development resource for new industry.

AASA and AESA urge that the FCC use level of connectivity as a performance measure for the E-Rate program. This would be consistent with the legislative intent under the creation of the program in the 1996 Telecommunications Act. By asking school districts on their E-Rate application what their level of connectivity is in terms of uplink and downlink speeds, this would allow a comprehensive picture about the quality of that connection. With over 98 percent of the schools across the country connected to the internet, a simple test for connectivity does not tell the full story. Meeting the increasing demands of distance learning over a dialup connection is not meeting true connectivity. We should be supplying connectivity that meets the ever changing demands of the technology and content market. It will be difficult to single out the impact of E-Rate dollars on technology advancement in school districts. School districts have been able to accomplish so much by leveraging the dollars they are saving through the discounts to provide additional and comprehensive technology services in their districts. While E-Rate dollars are not going directly toward providing all of these services, it is clear that they would not be possible without the E-Rate program.

A caution: past experience with the forms containing unnecessary requests for information has not proven effective. The program needs to be simplified, as verified by all previous comments. Serious thought must be given to any additional requests for information. Does the request have educational merit? Will it help the students?

The FCC would also like to know how to determine who is not applying for E-Rate dollars. This is an important clarification to help target outreach programs to encourage those not participating to apply. For public schools, this could be accomplished by cross referencing a list of school districts that have participated in the E-Rate program with a full listing of school districts in the country supplied by the U.S. Department of Education. The NCES number could be used as the identifying number for both lists, allowing for easy cross referencing. However, if this work is done, it should infer the outreach of the SLD, USAC and the FCC. With limited dollars available
for training and outreach, the Administrator should focus on those school districts not yet applying.

**Paragraph 29 – Application Timing Issues**

We applaud the FCC for looking for ways to improve efficiency within the E-Rate application process. The application process is a critical element of this efficiency. Over the past seven years, the application timelines have fluctuated. This has caused confusion at the local level. It is difficult that the Form 471 window continues to fall over the holidays for school districts. While this may not be able to be avoided, it would be helpful for the application windows to be set and carry over from year to year. This way, an applicant will know when to expect the window every year and can plan accordingly. At the same point, we encourage USAC to continue its efforts to speed up the issuance of the commitment letters. When these letters are late to the applicants, it forces a ripple effect that will eventually cause more work for the school districts.

In addition, some of the deadlines on additional forms’ submissions are rotating based on the date a district receives their commitment letter. This is true in the case of the Form 486. It would be helpful to have a uniform set deadline so applicants would know when to respond or send applicants an email reminding them of their specific deadline. This would ensure that schools that followed the process throughout do not lose access to their discounts based on a missed deadline.

AASA and AESA urge the FCC not to consider measurements to capture the cost per student. This is not an equal measurement because it fails to take into account the added cost of providing services in specific locations, such as rural America. The FCC and USAC should not ask for more information on the application forms than is necessary. Lengthy forms often act as a deterrent for small school districts to apply.

Finally, timelines should be put in place for the appeals process. It is not fair for the applicants to be held to a series of strict deadlines while appeals can take months and in many cases, years. Appeals can sit at the FCC for long periods of time with little communication with the applicant. This often complicates the applicant’s application for the following year. Also in many cases, the applicant is not aware of the specific reason they were denied E-Rate discounts. If they were able to find out the specifics of their
denial, they may choose not to appeal and, in many cases, not make the same mistake on the next year’s application. Communication and consistency are the two key ways that the E-Rate process can be improved.

**Paragraph 33 – Program Management**

For AASA and AESA, this is the most important section of the NRPM. We strongly oppose the proposal to change the E-Rate into a formula grant program directly to school districts and libraries. While this may make administering the program easier for some, it would violate some of the basic tenets of the program. First of all, transferring the program to a per-pupil allocation would needlessly disadvantage rural America. For example, Benton Area School District is one of the smallest school districts located in central Pennsylvania with 752 total students. Because of their rural location, the cost of Internet access is 45% higher than other districts. If a per-student formula was implemented, this district would receive the least amount of E-Rate funding among its neighboring school districts, yet would be incurring the greatest cost for Internet Access. Given this situation, we do not believe that any steps could be taken that would overcome the disadvantage of higher connectivity costs and smaller number of students in rural America.

In addition, a formulaic approach would provide additional challenges to applicant school districts. If a school district wanted to apply for funding to implement a new or updated technology program, the startup costs would be much more than the annual maintenance costs. It would be difficult to account for this under a formula program. We also urge the FCC to not consider combining the E-Rate program as part of any other grant programs. This would pull the program further away from its original goal as a telecommunications program with educational benefits.

AASA and AESA support maintaining the E-Rate program as part of the Universal Service Fund. This consistent funding stream provides a level of certainty that school districts have grown to count on. Given the current federal fiscal situation, any attempts to move E-Rate funding out of the Universal Service Fund will doom the program. There is just not enough funding available under the normal appropriations process to see that this program is funded year in and year out.
Finally, transferring this program into a formula program with additional “flexibility” will make oversight of the program even more difficult. This is critical given the current focus on reducing waste, fraud and abuse. This proposal seems counter-intuitive to the FCC and USAC approach to solving these concerns.

**Paragraph 37 – Application Process**

AASA and AESA applaud the FCC’s efforts to streamline the E-Rate application process by recognizing the difference between applications for priority one services versus priority two. We support the FCC’s initial conclusion that there be a multi-year streamlined process for priority one services. This should be implemented through 3 year applications for recurring services. An applicant would only need to file their Forms 470 and 471 once and the application would be good for 3 years. This would streamline the process greatly, as well as encourage applicants to pursue multi-year contracts generating more savings over single year or month to month contracts.

Schools who are not participating often do not apply for the E-Rate program because the overall process is seen as bureaucratic and complicated. This is even truer for the smallest applicants. Many times, the staff in small schools is responsible for so many different jobs and responsibilities that adding on the complication of the E-Rate process can be seen as more trouble than it is worth. School districts are used to the application process and language used by the U.S. Department of Education. Shifting to the language of the FCC is often difficult for them to understand. Therefore, AASA and AESA support the introduction of an E-Z form for priority one services. This form, similar to ones used by the IRS for tax purposes, would allow the individual applicant to just enter the necessary data for these specific recurring services. Having easier access to priority one services would make applying more appealing for the smallest schools.

We would also support the use of a complete online application process. Applicants could establish PIN numbers that would allow them not only to file their applications online, but would also allow them to monitor their process through the system. This would add more information and certainty into the process. It could also be used to remind applicants of upcoming deadlines. This change in the application process would help to reduce any ministerial error caused by an applicant who missed a deadline.
Paragraph 38 – Application Process

The FCC duly notes the impact of delays in the application process on schools. Such delays make future planning that much more difficult. For instance, when the Anti-Deficiency Act was imposed on E-Rate, it delayed the distribution of commitment letters for over five months. This made it nearly impossible for school districts to plan for the next year’s application when they were not even informed as of yet of their discounts for this year. It is also vitally important that USAC issue commitment letters as soon as possible. By limiting the delay in getting out commitment letters, applicants are able to do more careful planning and get a jump start on any necessary appeals. The other concern for applicants is the long delay in the resolution on appeals. This uncertainty makes it more difficult for applicants to plan. The FCC should respect the restraints that it puts on applicants and clear appeals in a more timely fashion.

Paragraph 40 – Competitive Bidding

Applicants should only have to comply with state and local law that are in place for procurement and competitive bidding of services and equipment. School Districts have been doing this for years, are audited internally and are held accountable if state and local laws and regulations are violated. Most states already have a certain dollar amount that triggers the competitive bidding process. Along this same premise, contract language and procurement requirements vary from state to state and applicants must comply with those state and local regulations. There is no reason for this to be an additional requirement of the E-Rate program.

For many small rural districts, there are no options for local telephone service, and most districts never receive a response or proposal from the local telephone company. If more formal bidding requirements were implemented, this would result in more work and hardship for these districts with minimal results. The Form 470 provides an easy way for districts to meet the competitive bidding requirements of E-Rate. In addition, if the change was made to allow priority one service applications cover a three year period, the Form 470 would become even less burdensome. This will continue to be true as long as competitive bidding requirements are met by posting on the SLD website.
Paragraph 43 – Service Providers and Consultants

Currently, any service provider can register for a SPIN number without certifying their understanding of the E-Rate process and eligible services. This can often lead certain applicants to believe “promises” and “guarantees” of their service providers and consultants. By establishing a certification process in order to obtain or renew a SPIN number, service providers and consultants will get a better understanding of the E-Rate program and establish an open line of communication with the SLD.

Paragraph 60 – Disbursement of Funds

The demand for discounts and funding under E-Rate consistently exceeds the amount of available funding. During the last rulemaking, the FCC determined that the SLD should be allowed to carryover any remaining dollars within the $2.25 billion cap from previous funding years into the current funding year. This was a huge victory for the education applicant community and we applaud the FCC’s support of those efforts. Since then, the FCC has been slow in actually transferring the money to the current funding year and has even on occasion used those dollars to offset funding gaps in the USF or to prevent the telephone companies from a higher contribution rate. We believe that these dollars are critical to helping to meet the high demand for E-Rate. The FCC should stand by its previous decision and allow rollover funds to be applied to the current funding year. Because school districts apply for their E-Rate discounts so far in advance, there is no way to guarantee that the full amount up to the $2.25 billion cap will be used each year. There is no way to foresee any complications a local district might have between the filing of the application and the service delivery from paying for their share of the services. Also, USAC holds back a certain amount of the funding each year to cover appeals. If the appeals were decided in a timelier manner, it would make the set aside funds not needed for appeals available.

Paragraphs 68 - 74 – Program Oversight

AASA and AESA strongly support the FCC’s clarification between ministerial error and fraud. The complex labyrinth of FCC and USAC rules on the E-Rate process make these errors more likely. The FCC should take steps to make sure that all rules and
procedures are published clearly and in the simplest terms possible. Often, when information is published by the FCC, it is more complicated for the schools to decipher. Using common language and as little technical verbiage as possible would go a long way in increasing understanding. All rules and procedures to which applicants will be held responsible should be published and easily accessible.

While the FCC and USAC should be commended for their efforts to safeguard against waste, fraud and abuse in E-Rate, they should not overextend their policies in the case of audits. First of all, public schools are public agencies that are accountable to their states and their communities. School districts already undergo frequent audits to ensure the proper use of public funding. If there are additional expenses required to apply for E-Rate discounts, smaller school districts would choose not to apply. They do not have the resources and the cost of the audit would exceed the amount of money they would receive from the program. In addition, USAC dollars spent on increased auditing would reduce the amount of money available for E-Rate discounts. With demand consistently exceeding availability, this decision should not be taken lightly. The student’s best interests must be taken into consideration. Reducing the overall amount of available discounts to haphazardly increase auditing is clearly not in their best interests.

When audits are conducted, they should be completed using the available rules at the period being audited, not the currently available rules. It is not fair to hold applicants accountable to rules that were not in existence at the time. Applicants should also be provided audit reports. They can be a vital and informative tool for applicants, service providers and other stakeholders. It is also important that timing is considered when audits are conducted. It is not fair to applicants when audits are conducted during rush times and deadlines in the current year’s application.

**Paragraph 80 – Contributor Audits**

It is important that all participants within the Universal Service Fund programs are treated with the same level of scrutiny. If school districts and other E-Rate applicants are subjected to potential auditing, then contributors to USF should be held to the same level. In the past, there have been questions raised about the consistency of the contribution factor as set by the FCC and the percentage being charged to individual
consumers by the contributing companies. It is important that long distance phone
 carriers be as accountable as all other stakeholders.

**Paragraph 90 – Measures to Deter Waste, Fraud and Abuse**

While we support efforts by the FCC and USAC to prevent waste, fraud and abuse, it is important that the safe guards do not deter eligible applicants from participating in the program. Due to meeting the technological needs that vary from district to district, a cap could limit the most cost effective technological approach. There may be areas where only one type of technology is available in an area, but it might be more costly than allowable. Once again, it will most likely be the small, rural applicants who are hurt by this cap. Instead, time and effort should be spent on outreach to those districts to help them apply. With the new limitations on transfer of equipment and requests for internal connections, this cap should not be needed. Additionally, there is always the possibility for technical review.

Steps to strengthen the competitive bidding section may also raise complications for small, rural districts. It is sometimes difficult for them to get multiple bids for recurring services, especially where there are a limited number of vendors. In some cases, well written specific requests for proposals (RFPs) fail to attract vendors because of the lengthy and cumbersome process they are required to go through in order to make the sale. This is often true of smaller vendors in rural areas. School districts are obligated by state and local bidding requirements. It seems that this is an area that could be eliminated from the regulations. Districts are held to strict requirements by state law and these may be in conflict with FCC regulations. If a school district is following state bid law, it should be satisfactory with FCC. These regulations are developed by state elected officials that represent the norms of the area.

USAC should continue to provide guidance in the area of eligible services. There should be a hotline established that an applicant can call to determine if their request would be considered eligible prior to the filing of the application. Detailed guidance on eligibility, defined in understandable terms, would eliminate many denials of funds, appeals and unintended errors. With new technologies and terminology, different percentages of eligibility, etc, it is extremely difficult for an applicant to get it right. The
ambiguity in this program needs to be eliminated. This would be a prime factor in reducing waste, fraud and abuse. However, the FCC and USAC should be wary of establishing average costs per item because the overall range is going to be wide due to geographic location, availability and demand. Trying to force a one-size-fits-all costing plan will hurt school districts in unique situations where there are often added costs.

**Paragraph 95 – Other Actions to Reduce Waste, Fraud and Abuse**

Additional language prohibiting recipients from misspending funds would not be necessary; the general public already holds school districts and other public agencies accountable. School districts already have many checks and balances in place that address inappropriate management of funds. Additional language would be unnecessary at this point. Violation of program rules must be considered on a case by case basis. Any other approach will make it difficult to accept the difference between ministerial error and intentional fraud.

**Paragraph 97 – Extending Program Rules to other USF Programs**

Rules intended to deter waste, fraud and abuse under the E-Rate program should be extended to all programs within the Universal Service Fund. One of the challenges in trying to debar or discourage predatory contractors from the E-Rate program is the turnover in both vendor sales and school district staff. As stated earlier, this makes it even more critical that program rules are clearly laid out in common language. This will allow new participants in the program to learn the program operation. It would also be helpful for USAC to establish a short online training program that could be downloaded off of their webpage. This would also help in reeducation.

Debarring vendors is an effective deterrent as it typically generates negative publicity for that company in addition to eliminating them from participating in the E-Rate program in the future. However, steps should be taken to determine if the vendor shuts its doors and opens up under another name in another state. It would be difficult for school districts to know the vendor’s true background. For school districts, barring an entire district for the action of one individual may be too harsh depending on the circumstances. For example, if the district staff person was involved in improper bidding
or a kickback scheme, they would undoubtedly be prosecuted separate of the E-Rate investigation by the district itself, if not more. On the other hand, school districts that continue to violate E-Rate rules for multiple years after being notified of these violations should probably be suspended from the program for a period of time depending on the circumstances. Again, it is important to handle these situations on a case by case basis and avoid getting caught in large policies that do not allow for necessary flexibility.

Comments were prepared by Mary Kusler, Assistant Director for Government Relations for the American Association of School Administrators in consultation with a committee of AASA and AESA membership.

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