

Before the Federal Communications Commission
Washington DC 20554

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

Comments of the Education and Library Networks Coalition

I. Introduction

The Education and Library Networks Coalition (EdLiNC), a group comprised of the leading public and private education associations and the American Library Association, was formed in 1995 to advocate for the interests of schools and libraries in the Telecommunications Act of 1996, is pleased to provide comments on this Commission rulemaking, which we hope will chart the path for the E-Rate’s future.¹ Since the enactment of the E-Rate as part of the Act, EdLiNC has pursued a mission of promoting and improving the E-Rate to fulfill its mission of accelerating the deployment of advanced telecommunications and information services in schools and libraries and has filed in every Commission rulemaking related to the program. As is reflected in our comments below, EdLiNC continues to focus on the promotion and advancement of the E-Rate.

¹ See Appendix A for complete list of EdLiNC members.

In these initial comments on the Commission's most recent Public Notice² on the ongoing E-Rate modernization proceeding, we make the following key points:

1. EdLiNC continues to believe that the E-Rate is an extremely successful program, its focus on poverty and equity remains vital, and its structure and priority system have served the program well.
2. EdLiNC supports efforts to modernize the E-Rate and believes that the most important steps the Commission could take in that regard include: raising the program's inadequate annual funding cap; enhancing the program's current focus on providing sufficient and sustainable broadband access; and streamlining its application process.
3. EdLiNC is not prepared to propose or support a major, permanent structural overhaul of the program at this time, especially within the Priority II internal connections space.
4. EdLiNC urges the Commission to direct the vast majority of the \$2 billion in funds that it has identified to fulfill Priority II requests and proposes the use of a temporarily revised Priority II distribution system for only those funds.
5. EdLiNC opposes the removal of existing E-Rate funds for pilot or demonstration projects as they bleed scarce dollars from an already oversubscribed program.
6. EdLiNC continues to believe that voice service is important for schools and libraries and that the removal of voice service from the program's eligible service list will work a significant hardship on numerous applicants.

II. EdLiNC continues to believe that the E-Rate is an extremely successful program, its focus on poverty and equity remain vital, and that its structure and priority system have served the program reasonably well.

As we outlined in our initial comments to the Commission's July 23, 2013 Notice of Proposed Rulemaking (July NPRM)³, EdLiNC believes that the E-Rate program has proven itself extremely successful in helping schools and libraries nationwide establish at least basic and quite often high-speed broadband connections to the Internet. We reiterate here, as well, that the program's basic structure and priority system have served the program reasonably well. We also

² Modernizing the E-Rate Program for Schools and Libraries, WC Docket No. 13-184, Public Notice, released March 6, 2014.

³ Comments of EdLiNC, WC Docket No. 13-184 (filed September 16, 2013).

believe that the program's cornerstone principles – local decision making and technological neutrality – retain their validity and continue to reflect the goals of the program's framers. Finally, we assert the continuing vitality and importance of the E-Rate's focus on equity and poverty in distributing support and urge the Commission to maintain those key values as it modernizes the program.

III. EdLiNC supports efforts to modernize the E-Rate and believes that the most important steps the Commission could take in that regard include: raising the program's inadequate annual funding cap; enhancing the program's current focus on providing sufficient and sustainable broadband access including through establishing broadband goals; and streamlining its application process.

EdLiNC has been on record for several years in support of modernizing the E-Rate. We appreciate this Commission's attention to modernization and its efforts during this entire rulemaking and through this Public Notice to bring new vision and energy to the E-Rate program. However, we must restate our fundamental premise for modernizing the E-Rate as this Commission considers significant changes to it: the program works reasonably well and requires only a few adjustments in order to quickly and efficiently bolster the nation's broadband capacity in an equitable and sustainable way. Specifically, we believe that a fully modernized E-Rate that is prepared to lend significant broadband support to schools and libraries for the next fifteen years will contain the following elements: an increased annual funding cap to meet burgeoning demand for broadband services; an enhanced focus on providing applicants with sufficient and sustainable broadband access; and a streamlined application process.

First and foremost for EdLiNC, though, is raising the program's cap. EdLiNC has consistently maintained in all of its previous filings that the program's annual funding cap, set more than 15 years ago, is simply inadequate to keep up with need. We will not repeat here the reams of statistics that we provided in our earlier filings about how demand routinely eclipses available funding and now stands at more than twice the amount of the current cap. Nor will we describe again how actual demand, as opposed to application demand, is suppressed owing to the fact that most applicants below the 85% eligible discount level recognize the futility of seeking Priority II support and thus no longer submit Priority II applications. The facts, as the original July NPRM made clear in its own text, are clear and not in dispute.

However, we will mention one relevant event that has occurred since we last filed in this proceeding that we think underscores the E-Rate's funding crisis. For the first time in the program's history, the E-Rate will not provide any support to any applicant for Priority II services. It appears that Universal Service Administrative Company (USAC) and the Commission decided to deny all Priority II applications for Program Year 2013 based on the fact that Priority I demand alone superseded the cap by a significant amount, leaving very few if any dollars to put towards Priority II. Given the fact that Priority I demand will likely continue to climb as it has done for many years, we fully expect the same decision in Program Year 2014. Moreover, there has been huge growth in Internet access demand, rising from \$464.9 million in Program Year 2010 to \$790.3 million in 2013. With a full expectation of that trend continuing, we must note that any savings that the program realizes from the proposed limitation or complete elimination of support for voice services will likely stay in Priority I and not reach Priority II. In sum, without more funding in the program, we may not see support for internal connections again.

Second, in EdLiNC's initial comments in the July NPRM, we indicated that we supported fully efforts to establish broadband-focused goals for the E-Rate program. We applauded President Obama and Commissioner Rosenworcel for "advancing well-considered national goals and measurements" but cautioned that any goals must take into account "different needs, geographies and costs faced by each school and library applicant," be based on "data that establishes current levels of bandwidth capacity for each applicant and charts expected future needs," and not become punitive mandates.⁴ We embrace our earlier comments here and add that we support enhancing the program's focus on providing sufficient and sustained broadband access to all of America's libraries and schools.

Third, EdLiNC is encouraged by the Commission's efforts to streamline the program's application system. For years, we have advocated for allowing Priority I applicants seeking recurring services to submit multi-year applications and we renew our call for them here. We believe that this change would serve not only as an immense time saver for current program participants but would become an inducement to participate for those eligible schools and

⁴ EdLiNC Comments at 16-19.

libraries that have elected not to apply because of the time consuming nature of annual Priority I applications.

IV. EdLiNC is not prepared to propose or support a major, permanent structural overhaul of the program at this time, especially within the Priority II internal connections space.

EdLiNC has indicated clearly throughout this proceeding that the E-Rate program is structurally sound and that its major structural weakness is the lack of adequate funding. We have said, and restate here, that the program's cornerstone principles – locally driven decision making, technological neutrality, equity and poverty – remain as valid today as in 1996 and have served the program well over its more than 15 years in operation. We have also acknowledged that the program would benefit from some small changes, particularly in the areas of funding, the application process and new goals. For all of these reasons, we are loath to support massive, permanent alterations to the well-balanced and principled current structure of the program.

The instant Public Notice proposes significant structural shifts to Priority II, including establishing a specific set aside for this funding pot and proposing to substitute the current, poverty-driven distribution system with one of three new options: 1) allowing applicants to apply once in a five-year span; 2) creating a rotation system through which applicants would receive support initially and then only again once all other applicants have been served; or 3) establishing a per capita, per classroom or per building formula.⁵

EdLiNC has significant concerns with each component of the proposal to refashion Priority II permanently, beginning with the idea of a specific set aside. We do not believe a specific set aside would be necessary if the Commission elected to raise the program's annual cap, thereby allowing a greater flow of dollars to Priority II after satisfying Priority I demand. Additionally, we cannot offer a particular dollar figure or percentage set aside that makes sense within the current structure as too high a set aside for Priority II might lead to rationing of critical Priority II services and too low a set aside for Priority II might make it impossible to make progress towards the goals of high bandwidth in every library and classroom. Finally, after two years of no Priority II support and many years of support limited only to applicants in the highest ranges

⁵ E-Rate Modernization Public Notice, paras 9-19.

of the discount matrix, there will be significant pent up demand for internal connections support when Priority II support resumes again. Imposing any kind of cap or limit on Priority II support at that time would truly impede efforts to achieve the President's and Commission's stated goals of connecting classrooms and libraries at broadband speeds.

EdLiNC also cannot endorse any of the three Priority II funding distribution mechanisms proposed in the Public Notice because we do not believe that any of them meet the Commission's stated goal of providing "more widespread access to funding internal connections."⁶ The proposal to adopt a "one-in-five year" rule, for example, is unlikely to succeed in that regard. Back in 2003, when the Commission adopted the "two-in-five" rule, it explained:

We find that, by limiting the frequency in which applicants may receive Priority Two discounts, funds will be made available to more eligible schools and libraries on a regular basis. Specifically, we find that the twice-every-five-years rule we adopt balances this goal with the need to ensure that the most disadvantaged schools and libraries are able to maintain functioning internal connections networks. Permitting applicants to receive support more often than twice every five years would not make funds available to significantly more eligible schools and libraries, while limiting applicants to support less frequently than twice every five years could prevent applicants from updating their internal connections as necessary.⁷

Based on that logic, one would have expected that more Priority II funding would have been made available to more applicants and the most disadvantaged schools and libraries would have received adequate internal connections support. History has shown that neither of those two suppositions has proven out. In 2004, the year before the institution of the "two-in-five" rule, Priority II discounts reached the 70% eligible discount level. Since then, with the exception of 2010 when the Commission agreed to virtually empty the program's coffers and fund all Priority II applicants, Priority II E-Rate support has rarely fallen below 81%. Thus, one could argue that

⁶ E-Rate Modernization Public Notice, para. 13.

⁷ Third Report and Order and Second Further Notice of Proposed Rulemaking, FCC Docket 03-323, adopted December 17, 2003, released December 23, 2003, para.

the program was doing a better job supporting library and school internal connections *before* the Commission approved the “two-in-five” rule. Moreover, the most disadvantaged applicants have not been immune to limited Priority II support even with “two-in-five.” In Program Year 2013, USAC denied approximately \$1.75 billion in Priority II applications from 90% eligible applicants due to insufficient funds.

EdLiNC believes that the Commission’s decision to limit Priority II support to twice every five years had laudable intentions but that the data demonstrates that the rule failed in its central aims: spreading Priority II funding more widely and protecting the internal connections networks of the neediest applicants. We submit that this rule failed to deliver on the Commission’s promises for the same reasons we believe that the “one-in-five” rule would prove similarly unsuccessful: 1) applicants will continue to have the incentive to bundle their lowest income subdivisions and apply all at once for as much internal connections support as they project requiring during the five-year Priority II funding cycle, depleting the availability of funds for applicants with lower discounts; and 2) Priority I demand, even if voice service support is limited or eliminated, will continue to grow, leaving few dollars to apply to Priority II support. Based on nearly ten years of experience with the unsuccessful “two-in-five” rule, EdLiNC cannot support augmenting this limitation even further by going to “one-in-five.”

EdLiNC has slightly different concerns with the rotation mechanism described in the Public Notice, which contemplates applicants receiving Priority II support based on where USAC left off funding Priority II requests in the previous year. While it seems clear that, under such a system, Priority II support would reach all applicants eventually, it is not clear how the system could function practically. Almost since the E-Rate’s inception, USAC has struggled to issue Funding Commitment Decision Letters for Priority II applications in a timely way. Much of the slowness of this process can be attributed to the complexity of the applications submitted, the large dollar amounts attached to such applications, and the concomitant need for careful Program Integrity Assurance reviews and independent audits. As a result, USAC often cannot make a final determination on how far down in the discount eligibility matrix it can reach in a given funding year until months and sometimes years after that funding year has concluded formally. Thus, EdLiNC cannot understand how applicants in any given year will know whether it is, in

fact, their turn to apply for Priority II support as USAC will most likely have not determined how far down it will fund Priority II applications for two to three years prior, let alone the immediately preceding year.

Finally, EdLiNC is strongly opposed to any of the formula-based systems (i.e., per student, per classroom, per building or district based approaches) on which the Public Notice seeks comment, particularly its unintended negative impact on low income and rural and remote libraries and schools. We do not believe that any formula distribution of Priority II funding would advance the program's cornerstone principles of encouraging equity and protecting those most impoverished. The comments we made in opposition to a similar proposal that the Commission raised in the July NPRM apply to this proposal and we provide a small portion of them here:

Any formula-driven system is unlikely to account adequately for the needs of low income schools and libraries, pursuant to the establishing statute and the Commission's interpretations of the statute. Additionally, while a per pupil formula might more evenly distribute the funds, it would not necessarily advance the goal of increasing bandwidth in schools. The simple fact of the matter is that bandwidth is not sold on a per pupil basis and limiting E-rate support by a formula linked to per pupil allocations could very well lead to small rural and large urban schools and libraries receiving support that is inadequate to purchase higher bandwidth levels. While funding fairness may be achieved through a per pupil system, higher bandwidth levels may be compromised. We also disagree that a formula driven system would provide more flexibility for applicants. Although on the surface it would allow them to buy whatever they want, in reality they would only have enough money to buy what they will be able to afford with the subsidy, which may fall far short of what they need. Finally, from a practical standpoint, determining demand for funding and bandwidth would be difficult if not impossible, without an applications based system. This not only makes it harder to determine progress towards achieving national goals but may create problems for developing future growth and need projections.⁸

⁸ EdLiNC Comments at 22-25.

We are also concerned that any per pupil formula will undermine efforts to tackle poverty. Historically, federal education formulas have focused on concentrations of poverty because it is the concentration, not the mere presence, of poverty that has been well documented to negatively impact student learning and achievement.⁹ Studies have shown that the concentration of poverty is reflected in the percentage of eligibility for support, as opposed to a straight count of students in poverty. That is, 100 low-income students in a district of 1,000 students is a different level of poverty than 100 low-income students in a district of 10,000. Given this historic focus of federal education funding, particularly Title I, on concentrations of poverty, EdLiNC believes that the very act of diluting funding to a pupil level is antithetical to combating concentrations of poverty. It reflects the presence of, but not necessarily the concentration of, poverty. From our perspective, per capita limits are poor proxies for ensuring that funds remain truly targeted on the neediest populations.

Additionally, we disagree with the Public Notice's suggestion that applying a per capita or per classroom formula to Priority II funding is different than establishing a formula for the entire program as internal connections equipment remains largely constant and "should vary little based on the geographic location of school."¹⁰ In discussions with our members, we have learned of great variances in the costs of providing internal connections and WiFi in classrooms – ranging from \$1,200 per classroom in Cullman County Public Schools in Alabama to more than double that figure at the Bartholomew School Corporation in Indiana to \$3,000 per classroom in Calcasieu Parish Public Schools in Louisiana. The differences are attributable to local decisions to use different types of equipment and wiring as well as to greatly divergent labor costs for installations, upgrades and repairs. We cannot envision a formula that would be able to take into account the wide variety of internal connections equipment and their costs, the huge gulfs in labor costs nationwide, and the great disparity in the amount of infrastructure needed in classrooms to support a wide range of different services and the number of users per classroom without unduly restricting local choice in building internal connections networks. For all of these reasons, we oppose instituting a formula-based distribution system for Priority II services.

⁹ Poverty & Race Research Council:

http://www.prrac.org/pdf/annotated_bibliography_on_school_poverty_concentration.pdf;

ETS Center for Research on Human Capital and Education, July 2013. Poverty & Education: Finding the Way Forward. http://www.ets.org/s/research/pdf/poverty_and_education_report.pdf

¹⁰ E-Rate Modernization Public Notice, para. 20.

V. EdLiNC urges the Commission to direct the vast majority of the \$2 billion in funds that it has identified to fulfill Priority II requests and proposes the use of a temporarily revised Priority II distribution system for only those funds.

The Public Notice raises the question of how to distribute the \$2 billion identified by the Commission from current funding. EdLiNC submits that the dearth of funding for Priority II in previous years coupled with no Priority II funding in Program Year 2013 militate in favor of devoting the vast majority of those funds to Priority II. Additionally, EdLiNC proposes that the Commission disseminate the \$2 billion identified through a temporarily revised Priority II distribution system that would be valid only for the identified funds.

The case for applying the vast majority of the \$2 billion in identified funds to Priority II is very strong. For openers, achieving the President's and the Commission's stated goals of delivering high speed broadband to all libraries and schools is predicated on each school and library building possessing a robust internal connections network. And schools find themselves struggling on that score. According to the Consortium for School Networking's 2013 E-Rate and Broadband survey, only one quarter of responding school districts indicated that all of their schools met the 100 mbps per 1000 students standard that President Obama and Commissioner Rosenworcel have suggested as an interim goal.¹¹ The CoSN survey also noted that internal connections systems fall short in many districts, with 57% of school districts surveyed stating that they do not believe their school's wireless networks currently have the capacity to handle 1:1 deployments.¹² Additionally, survey respondents stated that half of their school buildings have wiring that is in part older and slower (Cat5 and Cat3) and thus unable to carry data at broadband speeds.¹³ Finally, according to respondents, only 57% of elementary schools and 64% of secondary schools have all of their classrooms fully equipped with wireless Internet connectivity, leaving sizable percentages of their students behind.¹⁴

¹¹ CoSN, E-Rate and Broadband Survey 2013(2013), p.2.

¹² CoSN at 3.

¹³ Ibid.

¹⁴ Id.

One of the reasons that applicants may be falling behind in their internal connections and wireless coverage is lack of E-Rate support. E-Rate Priority II funding, which supports internal connections including wireless access points, now no longer exists. For many years, there has not been enough Priority II support to go around. In 2011 and 2012, Priority II support only reached, respectively, the 88% and 90% discount eligible levels. And USAC could only reach those applicants by rolling over \$850 million in 2011 and \$1.05 billion in 2012.

In Program Year 2013, USAC's and 90% eligible applicants' luck finally ran out. Forced to expend \$450 million in roll-over money just to ensure full funding for Priority I, USAC realized that it would be unable to fully fund even the 90% eligible applicants for Priority II. To do so, would have required another \$1.75 billion in roll-over support. Additionally, even if USAC could match the highest level of roll-over funding that it has ever rolled-over, \$1.105 billion in 2010, it would have had to pro rate all 90% applications, leaving applicants in receipt of 34 cents in support for every dollar in their applications, rather than the 90 cents per dollar that they expected.

In addition to these statistics on Priority II funding levels, it is important to note that by the time the \$2 billion identified actually begins to reach schools and libraries, probably in Program Year 2015, there is an excellent chance that no applicants will have received Priority II support since Program Year 2012. Thus, there will be a great hunger for more support by then.

For all of the reasons enumerated above, we urge the Commission to make available the vast majority of the \$2 billion in identified funds for Priority II services. However, EdLiNC recognizes that merely sending the vast majority of this money to Priority II applicants using the current dissemination framework will assist some with internal connections but not make that funding more widely available. Indeed, with Priority II applications at the 90% discount level totaling more than \$1.75 billion, simply sending this money out in the regular order will not allow many or any applicants below 90% eligibility to receive support. Therefore, EdLiNC proposes that the Commission disseminate the portion of the \$2 billion identified and devoted to Priority II through a temporarily revised Priority II distribution system that would be valid only

for the distribution of the identified funds. Specifically, we endorse the following rules to govern this one-time distribution:

1. No school or library buildings that received Priority II support in the past five years would be eligible to receive support from the \$2 billion identified by the Commission.
2. All schools and libraries eligible after the application of (1) would be eligible to receive a share of the \$2 billion identified by the Commission in the same poverty order as the current system operates.
3. In order to ensure as broad a dissemination as possible of the \$2 billion identified by the Commission, each Priority II applicant eligible for a share would receive a decrease of their current eligible discount rate by a modest amount that would total no more than 10 percent.

EdLiNC believes that a short term change in the dissemination system for Priority II is eminently fair, spreads Priority II dollars far more widely than the current system, and protects the principles of poverty and equity on which the program was founded. At this time, we decline to support a permanent change to the Priority II structure as we believe that structure could continue to function with the infusion of adequate additional funding into the program. We hope that the Commission will consider this proposal seriously.

VI. EdLiNC opposes the removal of *existing* E-Rate funds for pilot or demonstration projects as they bleed scarce dollars from an already oversubscribed program.

The Public Notice seeks comment on two potential demonstration projects, focusing on bulk buying and technology assistance, and a library pilot program. EdLiNC does not take any position on the merits of these proposals, but unequivocally opposes the removal of existing E-Rate funds for *any* pilot or demonstration project since it would bleed scarce dollars from an already oversubscribed program.

VII. EdLiNC continues to believe that voice service is important for schools and libraries and that the removal of voice service from the program’s eligible service list will impose a significant hardship on numerous applicants.

The Public Notice seeks comments on limiting or eliminating voice services as eligible for E-Rate support. The central rationale for these proposals is to focus E-Rate funding on broadband services and to transition away from support for narrowband services.

EdLiNC understands the Commission’s intention but asserts that voice service remains critical to many libraries and schools, particularly in emergency situations. Additionally, if the Commission’s intention is, as the Notice suggests, encouraging schools and libraries to adopt more cost-efficient VoIP service for their telephony needs, we are compelled to point out that many schools and libraries, particularly in rural and remote areas, lack access to the high capacity broadband that would allow them to adopt VoIP. Further, we have heard from a number of rural applicants that voice support represents the bulk of E-Rate support that they receive and that its loss would *de facto* end their participation in the program. Finally, it is important to note that a Commission decision to limit or terminate support for voice services does not mean that many schools and libraries will elect not to purchase those services – many simply lack that option for practical and legal reasons; rather, it will force them to bear the full cost of voice services themselves. With school and library budgets still recovering from the Great Recession, these are costs that will not only be hard for them to incur but which may well lead to cuts in other necessary services or personnel.

If the Commission nonetheless decides to move forward with proposals to eliminate voice service from program eligibility, EdLiNC requests that the Commission only withdraw support for voice services in a phased or gradual way. A snap cut would prove devastating to libraries and schools, providing them no opportunity to prepare their budgets for such a large change or time to change or terminate their current voice contracts.

VIII. CONCLUSION

EdLiNC appreciates the Commission’s interest in modernizing the program and looks forward to continuing to work with it to bring this proceeding to a satisfactory conclusion.

Appendix A

EdLiNC Member Organizations

AASA: The School Superintendents Association

Association of Educational Service Agencies (AESA)

American Federation of School Administrators (AFSA)

American Federation of Teachers (AFT)

American Library Association (ALA)

Consortium for School Networking (CoSN)

International Society for Technology in Education (ISTE)

National Association of Elementary School Principals (NAESP)

National Association of Independent Schools (NAIS)

NASSP

National Catholic Educational Association (NCEA)

National Education Association (NEA)

National Rural Education Association (NREA)

National Rural Education Advocacy Coalition (NREAC)

National School Boards Association (NSBA)

United States Conference of Catholic Bishops (USCCB)