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DIVISION OF EXTERNAL AFFAIRS  
CHARLES H. HILL  
DIRECTOR  
(850) 413-6800

# Public Service Commission

April 5, 2002

## VIA ELECTRONIC FILING

Honorable William F. Caton, Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: CC Docket No. 02-6, Review of Rules Governing the Schools and Libraries  
Universal Service Support Mechanism

Dear Mr Caton:

Forwarded herewith are Comments of the Florida Public Service Commission in the above docket with regard to the Review of Rules Governing the Schools and Libraries Universal Service Support Mechanism.

Should you have additional questions, you may contact Greg Fogleman, the primary staff person in this docket, at (850) 413-6574.

Sincerely,

/ s /

Cynthia B. Miller, Esquire  
Office of Federal and Legislative Liaison

CBM:tf

cc: Brad Ramsay, NARUC

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

In the Matter of                                )  
  )  
Schools and Libraries Universal            )      CC Docket No. 02-6  
Service Support Mechanism                 )  
  )

**COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION  
REGARDING THE REVIEW OF RULES GOVERNING  
THE SCHOOLS AND LIBRARIES  
UNIVERSAL SERVICE SUPPORT MECHANISM**

The Florida Public Service Commission (FPSC) submits these comments in response to the Notice of Proposed Rulemaking (FCC 02-8) released on January 25, 2002. In this Notice, the Federal Communications Commission (FCC) seeks to review certain rules governing the schools and libraries universal service support mechanism. It initiated this review to ensure the continued efficient and effective implementation of Congress' goals as established in the Telecommunications Act of 1996 (the Act), and to explore a number of suggestions for improvement offered by schools and libraries, service providers, state and local governments, and other interested parties. As of July 2001, the Universal Service Administrative Company (USAC or the Administrator) had committed over \$5.958 billion in funds for the Schools and Libraries program during the first three funding years.

**Application Process**

The FCC seeks comment on possible changes in the application process that relate to eligible services in order to improve program operation and oversight. Currently, USAC makes available a list of categories of services that are eligible or ineligible. This list does not include any specific brands or items. One alternative identified in the FCC's NPRM would be to develop a list of specific eligible products or services that is accessible online. Applicants could select the specific products or services as part of their FCC Form 471 application.<sup>1</sup>

The FPSC believes that such a proposal has merit because it would serve to simplify the review process, reduce requests for ineligible services, and avoid accidental funding of ineligible services. Such a proposal should continue to allow applicants the flexibility to request funding for items that are not on this list, in order to allow for funding of new services that meet the program's restrictions. This could be accomplished simply by providing a space for an applicant to specify the name of the service and its provider, and to give a brief description of the service so that USAC could initiate a formal decision as to the eligibility of the service. We believe that it would also be prudent to periodically review the

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<sup>1</sup> Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

eligibility of services on the list to ensure that ineligible services do not become bundled with eligible services.

**Eligibility of Wireless Services**

The FCC requests comments on whether the eligibility for wireless services should be expanded at this time. The FPSC recommends that the FCC retain its existing rules regarding the eligibility of wireless services. We believe that the FCC's current interpretation of the statutory requirement that universal service discounts be provided for "educational purposes" as directed in Section 254(h)(1)(B) of the Telecommunications Act (the Act) is correct. Expanding eligibility to include the provision of wireless services for support staff such as school bus drivers clearly does not meet this standard. Broadening the eligibility to include these services might ease the application review process, but at the expense of creating an overreaching and ineffective system. Within this context, the eligibility of wireless services should be based on the cost-effectiveness of the technology. The Federal-State Joint Board on Universal Service recognized this in its first recommended decision. The Joint Board sought flexibility on behalf of schools and libraries "to use both the most efficient services and the most efficient technologies, including wireless and other emerging new

media.”<sup>2</sup> The FCC should remember the goals envisioned by Congress in the Act.

#### **Internet Access When Bundled With Content**

The FCC concluded, in the First Universal Service Order, that schools and libraries may receive discounts on access to the Internet, but not for any proprietary content. The FCC determined that if it is more cost-effective for a school or library to purchase Internet access provided by a telecommunications carrier that bundles a minimal amount of content with such Internet access, a school or library may obtain discounts on that bundled package. If the telecommunications carrier provides bundled Internet access with proprietary content to a school or library, and also offers content separate from Internet access, the school or library may only obtain discounts on the price of the Internet access (i.e., the price of the bundled access and content less the price of the separately-priced content).

In this notice, the FCC requests comment on whether these rules should be changed in order to fund Internet content. The FPSC believes that no changes are warranted, given the large volume of “free” content available. Expanding support to include proprietary content would likely increase the expense, and the current annual funding requests already exceed the \$2.25 billion cap.

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<sup>2</sup> Federal-State Joint Board on Universal Service, FCC 96J-3, Recommended Decision, Released November 8, 1996, ¶ 461.

**Development of Rules to Limit Equipment Transferability**

The Telecommunications Act of 1996 specifically notes that telecommunications services and network capacity provided to schools and libraries under Section 254(h) "may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value."<sup>3</sup> The current rules established by the FCC, however, do not prevent participants in the program from transferring equipment to other entities without charge. The FCC notes in the NPRM that it has received reports from state authorities, schools and libraries, and USAC that some parties are taking unfair advantage of the current rules. Specifically, some schools and libraries are transferring equipment and purchasing new replacement equipment with funds from the program each year.

While the FPSC recognizes that there may be some legitimate reasons to upgrade facilities because of technological innovations, manipulation of the program consumes resources that otherwise would have been better targeted to other program applications. Given the current circumstances, the FPSC believes it is necessary for the FCC to establish rules governing when and how equipment can be transferred without charge, before seeking to acquire new discounted equipment. We believe that inadequate incentives exist in the schools and libraries mechanism to prevent such wasteful or fraudulent behavior, without imposing restrictions on these transfers

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<sup>3</sup> 47 U.S.C. § 254(h)(3).

of equipment. Conditioning receipt of universal service discounts by ensuring that discounted internal connections are used at the requested location and for the use specified in the application process for a certain period of time would be appropriate.

### **Accountability**

The FPSC believes that one way to deter waste, fraud, and abuse is to make the current program more transparent. Making available additional data about the recipients of support would build greater confidence that the program is fair. Currently, it is difficult to acquire data in significant detail and format. The FPSC believes more information relating to what specific services have been committed to by a school or library should be made publicly available. This information, as well as the size of the school or library, would be of great use to increase the integrity and accountability of the system.

### **State Funding Cap**

The FCC requested comment on any other proposals that might further its goals of ensuring that the program's benefits are fairly and equitably distributed, and eliminating fraud, waste, and abuse. The FPSC believes that establishing a new, efficient direction for the E-Rate program can be achieved by focusing on an equitable distribution of funds to each state. We believe that there is merit in establishing a state funding cap. Specifically, schools and libraries within a state would only have access to an equitable

distribution of the \$2.25 billion according to the poverty level of the state. We believe that a cap would be useful in capturing growth in population within the state. If the population at the poverty level increases, the cap would be adjusted accordingly.

Since the Act stated that distribution of funds should be to the most economically disadvantaged in our schools and libraries, providing a "cap" on the funds would ensure a distribution based on the poverty level of each state. Some applicants presently have the ability to apply for funding that exceeds the eligible support based upon the poverty level of a particular geographic area. Thus, equity has not been achieved when funds are no longer available for other equally eligible applicants. We believe that such a rule modification would be effective because those eligible entities attempting to take advantage of the program would not adversely affect the available funds to some unknown school or library in another state. Rather, they would affect similarly situated schools and libraries within their own state. Participants could more effectively develop a self-policing strategy not found under the current environment. The FCC should also consider the following administrative operational principles that should be put into place under a "state capping" of funds:

- A. Each state would be capped according to its poverty level.
- B. The present USAC administration would continue to administer the funds and approve applicants with an understanding that each



state would have a funding cap that could not be exceeded. Funds would be awarded through all priority-one services and then priority-two services, as long as funds were available under the capped amount for that state.

- C. Remaining funds from any state at the end of a funding period would be put back into the "general fund" to be redistributed in the next funding year.
- D. State networks, elementary and secondary schools, and public libraries would have a better opportunity to plan for technology and telecommunications when the amount of funds were known in advance.
- E. Telecommunications companies would be able to address the infrastructure needs of a state by knowing ahead of time the amount of funds that will be available in each state. This would facilitate building a level of infrastructure that ultimately would provide quality service and adequate bandwidth to meet the needs of the applicants.
- F. Program Integrity Assurance (PIA) could assign individuals to each state for the review process. This would allow a very self-contained approach to the review process and allow PIA reviewers to become more familiar with the state infrastructures, contracts and applicants. By working more closely with PIA individuals in the review process, abuse in

funding requests and vendor selections would become easier to track and eliminate.

### **Conclusion**

The FPSC believes that the current rules regarding the eligibility of wireless services and Internet access bundled with content are consistent with the goals of preventing waste, fraud, and abuse and recommends that the FCC maintain the current rules. The FPSC believes that there are steps that can be taken to improve the current process and supports the proposal which would allow schools and libraries to specifically identify services already approved by USAC during the application process. We do believe that some flexibility should be maintained so new services that fit the established eligibility criteria can receive support as these services become available.

The FPSC believes it is necessary for the FCC to establish rules governing when and how equipment can be transferred without charge, before seeking to substitute new discounted equipment. As currently structured, the FPSC believes that there are insufficient incentives in the schools and libraries mechanism to prevent wasteful or fraudulent behavior, without imposing restrictions on transfers of equipment. In addition, the FPSC believes that one way to deter waste, fraud, and abuse is to make the current program more transparent. Making available additional data about the recipients of support would build greater confidence that the program is fair.

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The FPSC believes that establishing a new, efficient direction for the E-Rate program can be achieved by focusing on an equitable distribution of funds to each state. We believe that there is merit in establishing a state funding cap based on poverty. Schools and libraries within a state would only have access to an equitable distribution of the \$2.25 billion according to the poverty level of the state.

Respectfully submitted,

/ s /

Cynthia B. Miller, Esquire  
Office of Federal & Legislative Liaison  
(850) 413-6082

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

DATED: April 5, 2002

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

In the Matter of )  
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Schools and Libraries Universal Service ) CC Docket No. 02-6  
Support Mechanism )  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing  
comments will be mailed to the persons on the attached list.

/ s /

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CYNTHIA B. MILLER  
Office of Federal and Legislative Liaison  
(850) 413-6082

FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

DATED: April 5, 2002

**SERVICE LIST  
CC DOCKET 02-6**

The Honorable Michael K. Powell, Chairman  
Federal Communications Commission  
445 Twelfth Street, SW - 8th Floor  
Room 8-A204C  
Washington, DC 20554

The Honorable Michael J. Copps, Commissioner  
Federal Communications Commission  
445 Twelfth Street, SW - 8th Floor  
Washington, DC 20554

Qualex International  
The Portals, 445 - 12th Street SW  
Rm CY-B42  
Washington, DC 20554

Mary E. Newmeyer  
Federal/Congressional Affairs  
Alabama Public Service Commission  
100 N. Union Street, Ste. 800  
Montgomery, AL 36104

Lori Kenyon, Common Carrier Specialist  
Regulatory Commission of Alaska  
1016 West Sixth Ave, Suite 400  
Anchorage, AK 99501-1693

Earl Poucher, Legislative Analyst  
Office of Public Counsel  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

Larry M. Stevens  
Iowa Utilities Board  
350 Maple Street  
Des Moines, IA 50319

Nancy Zearfoss, Ph.D  
Maryland Public Service Commission  
6 Saint Paul Street, 16th Floor  
Baltimore, Maryland 21202-6806

The Honorable Kathleen Q. Abernathy, Commissioner  
Federal Communications Commission  
445 12th, SW - 8th Floor  
Washington, DC 20554

The Honorable Kevin J. Martin, Commissioner  
Federal Communications Commission  
445 Twelfth Street, SW - 8th Floor  
Washington, DC 20554

Sheryl Todd  
Accounting Policy Division  
Federal Communications Commission  
445 12th Street, SW, Room 5-C450  
Washington, DC 20554

The Honorable Nanette G. Thompson, Chair  
Regulatory Commission of Alaska  
1016 West Sixth Ave, Suite 400  
Anchorage, AK 99501

Peter A. Pescosolido  
Connecticut Department of Public Utility Control  
10 Franklin Square  
New Britain, CT 06051

Jennifer A. Gilmore  
Indiana Utility Regulatory Commission  
302 W. Washington Street, Suite E306  
Indianapolis, IN 46204

Joel B. Shifman, Esq.  
Maine Public Utilities Commission  
242 State Street  
State House, Station 18  
Augusta, Maine 04333-0018

The Honorable Bob Rowe  
Montana Public Service Commission  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620-2601

Mike H. Lee  
Montana Public Service Commission  
1701 Prospect Avenue  
P. O. Box 202601  
Helena, MT 59601-2601

Charles Bolle, Policy Adviser  
Nevada Public Utilities Commission  
1150 E. William Street  
Carson City, NV 89701-3105

Carl Johnson, Telecom Policy Analyst  
New York Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223-1350

Peter Bluhm, Director of Policy Research  
Vermont Public Service Board  
112 State Street, 4th Floor,  
Montpieller, VT 05620-2701

Barbara Meisenheimer  
Missouri Office of Public Counsel  
301 West High Street, Suite 250  
Jefferson City, MO 65102

American Library Association  
Washington Office  
1301 Pennsylvania Avenue, NW, Suite 403  
Washington, D.C. 20004

Jeff Pursley  
Nebraska Public Service Commission  
300 The Atrium, 1200 N Street  
PO Box 94927  
Lincoln, Nebraska 68508

The Honorable Thomas J. Dunleavy  
New York Public Service Commission  
One Penn Plaza, 8<sup>th</sup> Floor  
New York, New York 10119

Philip F. McClelland  
Pennsylvania Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Billy Jack Gregg  
West Virginia Consumer Advocate  
700 Union Building  
Charleston, West Virginia 25301

Council of Chief State School Officers  
One Massachusetts Avenue, NW · Suite 700  
Washington, DC 20001-1431