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

In the Matter of	)	
	)	
Comprehensive Review of the Universal Service	)	WC Docket No. 05-195
Fund Management, Administration, and Oversight	)	

Comments of E-Rate Management Professionals Association, Inc.
on
NOTICE OF INQUIRY
(Released September 12, 2008)

The E-Rate Management Professionals Association, Inc., (E-MPA) is a (501)(c)(6) trade association whose purpose is to promote excellence and ethics in E-rate professional management and consulting through certification, education and professional resources.

E-MPA serves as an advocate for the critical role served by E-rate management professionals and consultants. The organization strives to strengthen and support the E-rate program by acting as a self-governing body of E-rate management professionals and consultants. E-MPA provides assurance to stakeholders by maintaining the highest standards, developing and promoting best practices, and requiring ethical conduct for all members.

Directors elected October, 2008 are as follows: John D. Harrington, Funds for Learning, LLC; Winston E Himsworth, E-Rate Central; Deborah J. Sovereign, Kellogg & Sovereign Consulting, LLC; Dan Riordan, On-Tech Consulting; Kenny Acklin, Kenny Acklin & Associates; and Richard Senturia, eRateProgram, LLC.

Our Comments on the Commission's Notice of Inquiry are as follows.

¶19. At the outset, we seek comment broadly on ways to further strengthen the administration, management, and oversight of the Fund.

Our comments in this area focus on three aspects of the program which we believe will have substantial benefit not only to the administration and management of the Fund, but also to the effectiveness of the program for all stakeholders. Our comments will focus on three areas: the

annual funding cap for the Schools and Libraries program, the discount rate calculation mechanism, and the "Two-in-Five" rule for Internal Connections.

The Funding Cap Should be Increased.

Without question, the demand for telecommunications and Internet access services in schools and libraries has increased substantially since the inception of the E-rate program. Sophisticated, high-capacity technologies such as wide area networks, distance learning, and high-speed Internet access which were once reserved for schools and libraries on the cutting-edge of technology are rapidly becoming mission-critical services for a large percentage of educational institutions. Access to the Internet has become ubiquitous among schools and libraries, with bandwidth requirements for the provision of educational material to students, communication with municipal stakeholders, and the day-to-day administration and operation of public school districts increasing on a daily basis. Further, in order for these sophisticated connectivity resources to be utilized to their full potential, schools and libraries must build and maintain robust local area network and communications infrastructures.

This increased demand is highlighted in the general upward trend of E-rate funding requests. Although the actual demand has varied from year-to-year, the chart below shows that the overall demand for funding, particularly Priority 1 funding, has increased significantly from 1998. This demand appears to be on an upward trend such that the demand for Priority 1 funding is likely to eclipse the $2.25 billion funding cap within the next several years.
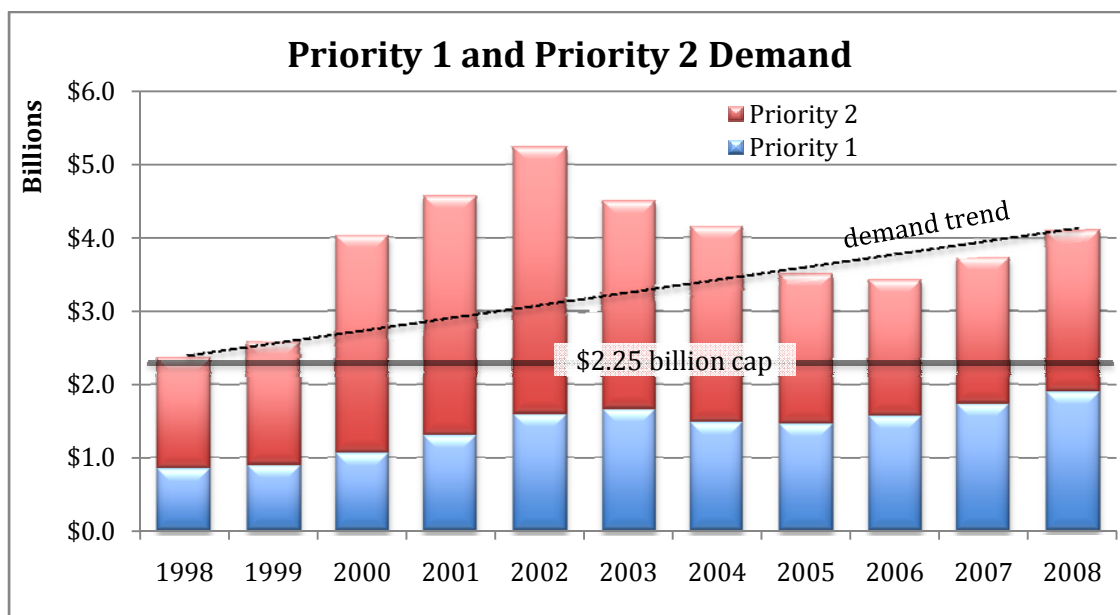
As the demand for advanced communications technologies have increased, so have the costs required to obtain this type of connectivity. This increase in cost, combined with the effect of inflation over the past twelve years, has significantly lowered the effective buying power of the USF since the program's first year of operation. As a result, the amount of funding available to schools and libraries to support critical Priority 2 network infrastructure is inadequate to address increasing demand.

In modern communications systems, advanced connectivity services and adequate underlying local network infrastructure are inextricably tied. Therefore, the lack of Priority 2 funds to support infrastructure purchases ultimately limits the effectiveness of advanced communications services discounted in the Priority 1 funding categories. In the end, the ultimate goal of delivering advanced communications capabilities to schools and libraries suffers when only a minority of applicants qualifies for discounts on all the components required for a complete solution.

For this reason, we urge the Commission to consider increasing the current $2.25 billion funding cap for the Schools and Libraries Program of the Universal Service Fund. We encourage the Commission to set the funding cap at a level high enough to provide funding for advanced communications services at the level of effectiveness originally afforded by the program at its inception. In considering an increase, we urge the Commission to take under advisement the historical, current, and projected future rates of inflation, as well as the projected increase in cost to schools and libraries implementing higher-capacity, more robust communications systems.

The Discount Matrix Should be Adjusted.
As other stakeholders have suggested, we urge the Commission to consider making a change to the existing discount rate calculation mechanism for Priority 2 services. In the E-rate program's eleven-year history, there have only been three years where the discount threshold has fallen below 80%, and only one year where all Internal Connections requests were able to be satisfied (Funding Year 1999.)

As has been argued in the past, it only stands to reason that when an institution has a greater stake in a purchasing decision, it will make that decision with greater care. Thus, we believe that

a downward revision in the discount matrix for internal connections purchases would go a long way to promoting "good behavior" on the part of program participants.

Although the original discount matrix was developed to facilitate technology adoption by the nation's poorest schools and libraries, the money has, in many instances, turned out to be "too easy." Ultimately, we believe, the program is not in a position to apply a microscope to every procurement and purchasing decision that a school district or library system makes. But it can better insulate itself from the potential for waste, fraud and abuse—not to mention negative publicity—by requiring that applicants pay a larger percentage of the cost of the products they will buy. This will help ensure that applicants are, in fact, making better decisions when they are forced to weigh their proposed technology purchases with other, competing budget demands. Further, when more local dollars are involved, watchdogs at the local level, namely local taxpayers and media, will be able to provide a more effective role in curbing potential abuses.

We agree with those who believe that the greatest potential for abuse is in the categories of internal connections and basic maintenance of internal connections, primarily because those purchases are more complicated and the range of choices greater. We believe that the approach recommended by the SLD's Task Force on the Prevention of Waste, Fraud and Abuse is a reasonable one, namely that the discount matrix be revised for the internal connections category, but retained for Priority 1 services so that applicants can continue to enjoy the level of connectivity they have put in place.

The "Two-in-Five" Rule Should Be Eliminated.
Beginning with E-rate funding year 2005, the "Two-in-Five" rule was established with the expressed intent of lowering the Priority 2 discount threshold to levels which would grant lower-discount applicants the opportunity to receive Internal Connections funding, presumably by controlling annual demand. While the rule initially reduced IC demand, since its implementation IC requests have steadily increased:

Internal Connections Demand and Commitments
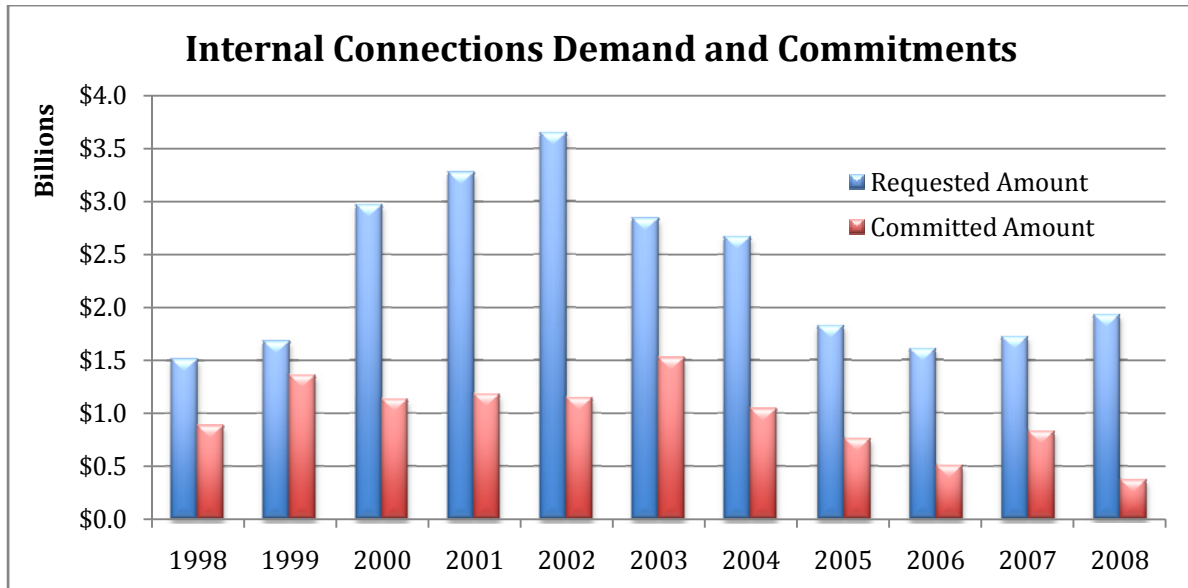
While the total number of Internal Connections requests filed since the rule's implementation has decreased steadily, the average dollar amount per request has risen at a rate inversely proportional to the decrease in count:

Average Requested Amount Per Internal Connections Request
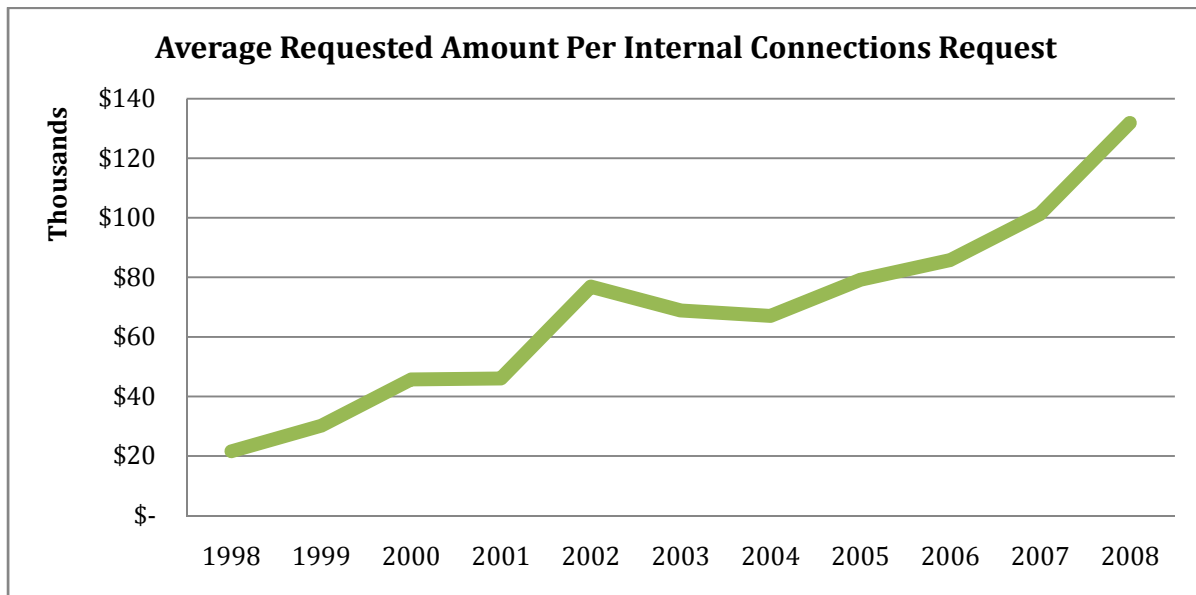
Given this, it appears that applicants cognizant of the "Two-in-Five" rule are strategically structuring applications to take better advantage of the funding opportunity in the years they choose to file Internal Connections requests. As a result, there has not been a significant reduction in the Priority 2 discount threshold since the rule was implemented.

While a purported ancillary benefit of the "Two-in-Five" rule was a potential reduction in waste, fraud, and abuse in Internal Connections funding requests, we believe that these concerns are adequately addressed via numerous other established oversight initiatives including high cost and cost-effectiveness reviews, selective reviews, and post-commitment audits. Further, because Internal Connections requests have simply shifted from smaller applications filed frequently to less frequent, larger applications, the potential fiduciary impact of waste, fraud, and abuse remains relatively static.

In addition to failing to accomplish its stated goals, the "Two-in-Five" rule shackles applicants and the Fund Administrator with substantial administrative burdens. Large school districts with hundreds of individual school sites – each with its own "Two-in-Five" calculation - are particularly affected. As the trend in technology moves toward more centralized infrastructure (such as one large PBX at a central location serving all schools rather than dozens of smaller PBXes scattered across a district) the planning problems are exacerbated. For example, applicants procuring district-wide infrastructure may be forced to cost-allocate the purchase based on one or more individual sites which have reached their "Two-in-Five" limit, introducing substantial confusion and the potential for mistakes. Further, the process for "removing" sites which have committed but unutilized Internal Connections funding (for the purposes of avoiding "Two-in-Five" penalization for that year) is not refined and has created significant administrative problems for both applicants and the Fund Administrator.

The "Two-in-Five" rule also creates significant problems for applicants who procure technology which, by its very nature, requires a yearly expenditure. Many applicants have been forced to switch from their preferred software products which require yearly license fees to less optimal solutions which require only a one-time purchase. In addition, the "Two-in-Five" rule effectively eliminates the possibility of procuring annual or monthly equipment leases which can be very cost-effective to organizations with tight budgets and understaffed technology departments. Finally, the segmentation of the Internal Connections and Basic Maintenance categories has created substantial administrative issues with respect to the way Basic Maintenance requests are administered.[1]

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[1] See Funds For Learning Comments on Proposed 2008 Eligible Services List at 2-3 (as filed August 10, 2007).

It is clear that the "Two-in-Five" rule has failed to grant lower-discount applicants an opportunity to receive Internal Connections funding while simultaneously contributing to an increased administrative burden on all E-rate stakeholders. As a result, we implore the Commission to consider eliminating the "Two-in-Five" rule for Internal Connections in the interest of streamlining the application process and increasing the operational efficiency of the program.

¶21. We seek comment on whether the Commission should establish additional rules pertaining to document retention and enforcement. We note that most problems identified in the audit results were related to lack of documentation by program participants.

We encourage the Commission to establish more realistic, pragmatic standards for document retention by adopting, for example, a *de minimis* rule. The existing document retention requirements are quite burdensome (especially for applicants), and it appears that the current audit process tends to be more focused on document retention for document retention sake than regulatory compliance. As a practical matter, it is exceedingly difficult for applicants to retain 100% of the documentation required without the occasional missing piece. We believe that establishing more reasonable standards for document retention (while continuing to address waste, fraud, and abuse concerns) would be of great benefit to applicants, the Fund Administrator, and third-party auditors. Auditors and USAC, for example, should be given the authority to ignore missing documentation when the absence of that document is *de minimis* -- i.e., does not interfere, as a practical matter, with the auditor's or USAC's ability to determine reasonably through other means whether there has been compliance with program rules.

¶22. We seek comment on whether the Commission should take steps to more clearly define the goals of the federal universal service programs.

We support the current emphasis of the E-rate program with respect to providing financial support for broadband access to the Internet, network connectivity, and other telecommunications services. Modern schools and libraries have become increasingly dependent upon network connectivity and broadband. Teachers and administrators have come to expect and rely upon high-speed connectivity to the Internet, as well as to voice and video resources, to help support virtually every aspect of their day-to-day work. As the reliance on technology continues to increase, robust, high-capacity connectivity resources become ever more critical to the success

of schools and libraries. At the same time, schools and libraries will find it increasingly difficult to pay for and maintain those resources, especially in these very difficult economic times and for some time to come. Therefore, we believe that the goals of the E-rate program should remain essentially the same: enabling universal access to the kind and quality of advanced telecommunications services, Internet access, and network connectivity that schools and libraries will require to "keep up," as telecommunications and technology continue to evolve at such a rapid pace.

¶23. In 2005 we sought comment on the utility of a permanent administrator of the USF. We specifically solicited comment from stakeholders on the option of eliminating USAC as the permanent administrator of the USF and thereby using a contractor (obtained using the FAR) to perform the administration of the USF. As a general matter, commenters either did not address this proposal or filed comments in support of retaining the status quo. We use this opportunity to refresh the record in this regard. Should the Commission continue to use a permanent administrator of the USF? Alternatively, the Commission could obtain the services of a contractor or contractors to perform the USF Administrator's functions. We seek comment on this option.

We urge the Commission not to remove USAC as the administrator of the Universal Service Fund ("USF"). As discussed in more detail below, a change in the day-to-day administration of the E-rate program would be unnecessarily disruptive and counterproductive, without providing any additional safeguards or benefits.

We believe that the E-rate program is becoming increasingly well managed, as evidenced by quicker funding decisions, faster invoice processing and payment, and a reduction in the number of erroneous decisions requiring appeal. It is evident that USAC has undertaken an effort to provide friendlier, more professional service to E-rate stakeholders, a change that is reflected in both its procedural and communicative efforts. Further, we have observed an increase in the transparency of the organization as policies and procedures become more refined.

In addition, changing administrators now would result in the loss of years worth of extremely valuable institutional knowledge and experience. This could have a devastating impact on the long-term health and efficacy of the program. When administering a relatively new program like the E-rate program, which has had so many rule changes and is continuing to evolve, understanding the history behind those rule changes, along with what has worked and what has

not, enables the organization with that knowledge to function far more intelligently, efficiently, and effectively than any organization could possibly function without it. Further, USAC's formidable experience provides a rich knowledge of E-rate stakeholders themselves – including those who make good faith efforts to be compliant and those who are known to intentionally circumvent policy.

As an example of the disadvantage of inexperience, one only needs to consider the mistakes made by first time E-rate applicants; or, perhaps more to the point, the reports of independent third-party auditors, which, while valid, show little understanding of the gravity of audit findings when viewed from a larger perspective. While written regulations can certainly be analyzed and enforced from a quantitative standpoint, a much greater breadth of experience is required to qualitatively assess the effectiveness of those regulations with respect to overall program success and efficiency.

Obviously, fundamentally changing one of the critical components of a cyclical program has the potential to destroy any operational efficiency that is currently enjoyed as a result of long-term procedural analysis. In a program where over 12,000 schools and 6,000 service providers currently participate, it is reasonable to construe that the potential exists for a good deal of confusion to be introduced among E-rate stakeholders as a result of such an administrative change. This would lead to mistakes, both in paperwork, documentation, and procedure as well as in funding decisions (which would increase the number of associated appeals.) As a result, this confusion would further contribute to the underutilization of committed funds, primarily as a result of increased frustration among applicants and service providers.

In addition to the consequence of the loss of knowledge and experience, a change in program administrator could potentially be very expensive. The program carries considerable knowledge resources, both in terms of personnel and information technology. A successful migration of these resources from one administrator to another would be critical to the ongoing efficiency of the program, a process which would no doubt be time consuming and expensive. Further, any gaps in oversight during the transition would create formidable potential for waste, fraud, and abuse in a program which currently enjoys a relatively low percentage of malicious activity.

Finally, a change in program administrator can be expected to introduce significant delays in the application review and invoice payment procedures. If a transition is implemented, there will be an increased burden on applicants and the administrator to ensure that there is no oversight or duplicity in the funding request and payment procedures. For a program which already carries a high burden of regulatory compliance, we expect that many stakeholders would cease participation and forego a much-needed funding resource in the interest of saving administrative headaches. As a result, it could be years before the program would return to the level of operational efficiency and stakeholder participation that it currently enjoys.

¶24. We seek comment from USF stakeholders on additional metrics the USF Administrator should collect and report to illustrate the quality of service it provides stakeholders.

We feel that metrics regarding the quality of USAC decisions are of critical importance in determining the performance of the Fund Administrator. While metrics reporting the speed of funding decisions are important, other observations such as the error rate of funding approval and denials (and other decisions) are critical. Decisions made at a faster pace are only of benefit to stakeholders if they are accurate and dependable. If the speed at which decision making is the only performance metric, the inevitable end result is that poor decisions will be made faster. We encourage the Commission to establish reasonable performance metrics that gauge both quantitative measures of operational efficiency as well as decision accuracy and error rates. In doing so, the Commission can further ensure that the Fund Administrator is functioning in a manner that is as professional and transparent as possible.

¶25. We seek comment on whether the Commission should establish additional performance goals and measures, or delete or revise any previously-established performance goals and measures, and, more fundamentally, if the Commission has the authority to set long-term goals for the USF programs.

The E-rate program's statutory mission is to give schools and libraries nationwide equal access to high-speed connectivity by making it affordable even to the most economically disadvantaged among them. Connectivity enables access to information. Information is today's global currency, its lifeblood. Therefore, the implicit social welfare objective of the program and the statutory requirement of the Act are essentially one and the same. Because of this, fortunately, the two do not need to become, as the Commission suggests, an "either-or" proposition.

To that end, therefore, performance metrics indicating the number of students, teachers, administrators, and library patrons receiving the benefit of discounted services would be quite useful. However, an assessment of the relative quality of the connections (bandwidth, reliability and uptime, and frequency and intent of use) is equally as important as the raw number of connections and number of people using them. As such, we suggest that the Commission consider additional statistical surveys of beneficiaries to analyze not only the breadth of the program's impact, but also the quality of that impact. As an example, a technology audit (for informational, non-punitive purposes) could be conducted to obtain information regarding what specific discounted services are deployed by schools and libraries and how successfully those technologies are addressing applicants' organizational goals.

¶29. Commenters should discuss appropriate long-term goals for the schools and libraries program and what the Commission should do with respect to the schools and libraries program after such goals have been met. For example, if an appropriate long-term goal is a certain level of connectivity in the Nation's schools and libraries, what should the Commission do, and what authority does the Commission have, with respect to the program after that level of connectivity is met?

As indicated above, we believe that enabling advanced connectivity to schools and libraries should be the primary and long-term goal of the program. Without question, the technological resources available to schools and libraries have increased substantially in the past fifteen years, and there is no indication that the pace of technology will slow in the foreseeable future. We continue to observe an increase in the use of rich media resources such as high-definition audio/video, real-time videoconferencing, and other bandwidth-intensive content and curriculum delivery services by schools and libraries. In order to adequately prepare students and conduct organizational operations in a high-tech world, schools and libraries must have substantial technology resources. In order to utilize these resources to their full potential, however, applicants must have access to a robust, reliable foundation of connectivity services and distribution infrastructure.

We fear that establishing a specified level of connectivity as a stated goal of the program ignores the historical (and projected) pace of the advancement of technology. As the complexity of computing, video, and collaboration solutions continue to increase (as does the reliance of schools and libraries on those technologies), so do the requirements and demands on the

underlying connectivity and communications infrastructure required for these solutions to function. As such, while establishing a technical goal of a specified level of connectivity may be sufficient in the short-term, there is every indication that the connectivity needs of schools and libraries will continue to increase at a rapid level. For this reason, we feel that it is critical that the program continue to keep its primary focus on continuing to provide a sufficient connectivity and infrastructure foundation to schools and libraries whose operation has become so heavily dependent on technology.

Submitted by:

E-Rate Management Professionals Association, Inc.

1101 Stadium Drive
Ada, OK 74820
866-334-1444

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