

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

**ORDER**

**Adopted: July 31, 2009**

**Released: July 31, 2009**

By the Acting Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we carry forward \$900 million in unused funds from the schools and libraries universal service support mechanism (also known as the E-rate program) to increase E-rate disbursements for funding year 2009. Although the Universal Service Administrative Company (USAC) has projected that \$1 billion in unused funds is available, we find that it is in the public interest to carry forward \$900 million and to reserve \$100 million for use in E-rate funding year 2010.<sup>1</sup>

**II. BACKGROUND**

2. The E-rate program permits eligible schools, libraries, and consortia that include eligible schools and libraries to apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>2</sup> The annual funding cap for the E-rate program is \$2.25 billion.<sup>3</sup> E-rate funds are allocated according to rules of priority, with first priority being given to requests for telecommunications services and Internet access (Priority One services).<sup>4</sup> The remaining available funds are allocated to requests for support for internal connections and basic maintenance of internal connections (Priority Two services).<sup>5</sup> Thus, requests for Priority Two services may be denied because available funds are exhausted. In fact, since funding year 2000, with one exception, Priority Two funding has been available only at the 80 percent level and above.<sup>6</sup>

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<sup>1</sup> See Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2009, available at [http://www.universalservice.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20\\_FINAL%205.1.09\\_.pdf](http://www.universalservice.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20_FINAL%205.1.09_.pdf) (last visited July 31, 2009).

<sup>2</sup> 47 C.F.R. §§ 54.501-54.503.

<sup>3</sup> 47 C.F.R. § 54.507(a).

<sup>4</sup> 47 C.F.R. § 54.507(g)(1)(i).

<sup>5</sup> 47 C.F.R. § 54.507(g)(1)(ii).

<sup>6</sup> See, e.g., Schools and Libraries News Brief (dated Apr. 11, 2008), available at <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=155> (last visited July 31, 2009) (setting the funding year 2007 denial threshold); Schools and Libraries News Brief (dated July 6, 2007), <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=98> (last visited July 31, 2009) (setting the funding year 2006 Priority Two threshold). In funding year 2003, Priority Two funding was available at the 70 percent discount level due to a \$420 million rollover of unused E-rate funds. See *Schools* (continued . . .)

3. Each funding year, a certain amount of E-rate funds remains unused.<sup>7</sup> In 2003, the Commission amended its rules to require that those E-rate funds identified as unused from prior years be used to increase the annual funding cap for the next E-rate funding year.<sup>8</sup> Section 54.507(a)(2) of the Commission's rules states that "in the second quarter of each calendar year, all funds that are collected and that are unused from prior years shall be available for use in the next full funding year of the schools and libraries mechanism in accordance with the public interest and notwithstanding the annual cap."<sup>9</sup> In accordance with this rule, the Commission has carried forward unused E-rate funds for use in funding years 2003, 2004, 2007, and 2008.<sup>10</sup>

4. On May 1, 2009, USAC submitted projections of demand and administrative expenses for the federal universal service fund for the third quarter of 2009.<sup>11</sup> According to USAC's projections, \$1 billion in unused E-rate funds from funding years 1999 and 2001 through 2007 is available to carry forward to increase disbursements to schools and libraries.<sup>12</sup>

### III. DISCUSSION

5. In this order, we carry forward \$900 million in unused E-rate funds from funding years 1999 and 2001 through 2007 to increase disbursements to schools and libraries for funding year 2009 in excess of the annual cap. Although USAC has identified \$1 billion in unused E-rate funds that is available to carry forward, we find that it is in the public interest to carry forward \$900 million of this amount and reserve \$100 million for use in E-rate funding year 2010. Carrying forward \$900 million will enable USAC to fund additional Priority Two E-rate applications for funding year 2009. As explained above, E-rate funds available under the \$2.25 billion annual cap are exhausted before funding all of the Priority Two requests from schools and library applicants.<sup>13</sup> Absent a rollover of E-rate funds from prior

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*and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26935, para. 57 (2003) (*Third Report and Order*) (carrying forward unused funds that were projected to be unused in the first quarter of 2004 for use during the remainder of funding year 2003, i.e., through June 30, 2004).

<sup>7</sup> For example, although USAC makes funding commitments up to the \$2.25 billion E-rate funding cap, many schools and libraries will not use the full amount of their funding commitments.

<sup>8</sup> See *Third Report and Order*, 18 FCC Rcd at 26935, para. 55.

<sup>9</sup> 47 C.F.R. § 54.507(a)(2).

<sup>10</sup> *Third Report and Order*, 18 FCC Rcd at 26927, para. 55; *Carryover of Unused Funds for Funding Year 2004*, CC Docket No. 02-6, Public Notice, 19 FCC Rcd 20420 (Wireline Comp. Bur. 2004); *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2007*, CC Docket No. 02-6, Public Notice, 22 FCC Rcd 10795 (Wireline Comp. Bur. 2007); *Carryover of Unused Federal Universal Service Funds for Funding Year 2008*, CC Docket No. 02-6, Public Notice, 23 FCC Rcd 9960 (Wireline Comp. Bur. 2008) (*2008 Carryover Public Notice*).

<sup>11</sup> See Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2009, available at [http://www.universalservice.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20\\_FINAL%205.1.09\\_.pdf](http://www.universalservice.org/about/governance/fcc-filings/2009/Q3/3Q2009%20Quarterly%20Demand%20Filing%20_FINAL%205.1.09_.pdf) (last visited July 31, 2009).

<sup>12</sup> *Id.* at 35-43.

<sup>13</sup> See *supra* para. 2.

funding years, the annual cap will preclude USAC from fully funding Priority Two requests in funding year 2009 at even the highest discount level, 90 percent.<sup>14</sup>

6. Based on past experience, we anticipate that a similar funding deficit for E-rate Priority Two funding requests will exist in funding year 2010. We reserve \$100 million of the available unused E-rate funds to supplement Priority Two funding in funding year 2010. Accordingly, we find that it is in the public interest to reserve \$100 million of the available unused funds for use in E-rate funding year 2010.

7. Additionally, on our own motion, we waive section 54.507(a)(2) of the Commission's rules, which requires that a rollover of E-rate funds must occur in the second quarter of each calendar year.<sup>15</sup> Given the large amount of the rollover in funding year 2009 and the public interest in funding Priority Two requests in funding year 2009, we find that good cause warrants a waiver of the second quarter deadline in this instance.

#### IV. ORDERING CLAUSES

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, and 254, and sections 0.91, 0.291, and 54.507(a)(2) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.507(a)(2), that this order IS ADOPTED.

9. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that section 54.507(a)(2) of the Commission's rules, 47 C.F.R. § 54.507(a)(2), IS WAIVED to the extent provided herein.

10. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach  
Acting Chief  
Wireline Competition Bureau

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<sup>14</sup> For funding year 2009, E-rate Priority One requests total \$2.04 billion and Priority Two requests for a 90 percent discount total \$808 million. Therefore, \$2.848 billion is required to fund all Priority One and all Priority Two 90 percent discount requests for funding year 2009, and this amount exceeds the \$2.25 billion annual E-rate funding cap. See Letter from Mel Blackwell, Vice President, Schools and Libraries Division, Universal Service Administrative Company, to Julie Veach, Deputy Bureau Chief, Wireline Competition Bureau, Federal Communications Commission (dated Mar. 10, 2009), available at <http://usac.org/res/documents/sl/pdf/sl-demand-estimate-2009.pdf> (last visited July 31, 2009).

<sup>15</sup> See 47 C.F.R. § 1.3 (providing that the Commission's rules may be waived for good cause); 47 C.F.R. § 54.507(a)(2). For funding year 2009, the rule required that the rollover be announced by June 30, 2009.