

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
Funds For Learning, LLC Petition to Reject	)	
the Administrator’s Discount Threshold	)	
Recommendation for Funding Year 2010	)	

**ORDER**

**Adopted: August 22, 2011**

**Released: August 22, 2011**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we accelerate disbursements of E-rate funding reserves so that more schools and libraries can upgrade their access to broadband services this year. We grant in part the petition filed by Funds for Learning (FFL) and direct the Universal Service Administrative Company (USAC) to make funding commitments for priority two services at the 80 percent discount level for funding year 2010.<sup>1</sup> On our own motion, we reverse our previous decision to deny priority two funding below 80 percent and direct USAC to make available funds for FY 2010 priority two requests at all discount levels.<sup>2</sup> We also announce the carry forward of \$850 million in reserved funds from the E-rate program to increase E-rate commitments for funding year 2011.<sup>3</sup> These actions will expand opportunities for education and employment in many communities without increasing the size of the universal service fund.

**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>4</sup> The original \$2.25 billion annual funding cap for the E-rate program is annually

<sup>1</sup> *Funds for Learning, LLC Petition to Reject the Administrator’s Discount Threshold Recommendation for Funding Year 2010*, Schools and Libraries Support Mechanism, CC Docket 02-6 (Feb. 2, 2011)(FFL Petition). Internal connections and basic maintenance of internal connections are priority two services.

<sup>2</sup> See Schools and Libraries News Brief (dated Mar. 4, 2011), available at <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=352> (last visited Aug. 3, 2011) (denying priority two requests below 79 percent).

<sup>3</sup> See Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2011, available at [http://www.usac.org/about/governance/fcc-filings/2011/Q3/3Q2011%20Quarterly%20Demand%20Filing%20\\_FINAL%205.2.11%29.pdf](http://www.usac.org/about/governance/fcc-filings/2011/Q3/3Q2011%20Quarterly%20Demand%20Filing%20_FINAL%205.2.11%29.pdf) (last visited Aug. 3, 2011) (USAC Third Quarter 2011 Fund Size Projection).

<sup>4</sup> 47 C.F.R. §§ 54.501-54.502.

adjusted for inflation.<sup>5</sup> E-rate funds are allocated according to rules of priority, with first priority provided to requests for telecommunications services and Internet access (priority one services).<sup>6</sup> The remaining available funds are allocated to requests for support for internal connections and basic maintenance of internal connections (priority two services).<sup>7</sup> Requests for priority two services are allocated first to applicants whose applications are eligible for 90 percent discount levels, then to those eligible for 89 percent discount levels, and so on, until the available funds are exhausted. Historically, the point at which funding for priority two services are exhausted has varied from 70 to 86 percent.<sup>8</sup>

3. Each funding year, a portion of E-rate funds remains unused.<sup>9</sup> In 2003, the Commission amended its rules and required that unused E-rate funds identified in prior years be used to increase the annual funding cap for the next E-rate funding year.<sup>10</sup> Accordingly, section 54.507(a)(3) 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>11</sup> By operation of this rule, the Commission has made available carry forward E-rate funds in funding years 2003, 2004, 2007, 2008, 2009, and 2010.<sup>12</sup>

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<sup>5</sup> 47 C.F.R. § 54.507(a); *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18780, paras. 34-40 (2010) (*Sixth Report and Order*). The cap for FY 2011 is \$2.29 billion. *See WCB Announces E-rate Inflation-Based Cap for Funding Year 2011*, CC Docket No. 02-6, DA-1345 (rel. Aug. 5, 2011).

<sup>6</sup> 47 C.F.R. § 54.507(g)(1)(i).

<sup>7</sup> 47 C.F.R. § 54.507(g)(1)(ii).

<sup>8</sup> In funding year 2003, priority two funding was available at the 70 percent discount level. *See Schools 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). Additionally, USAC funded to the 80 percent level in 2005 and to the 78 percent level in FY 2009. *See Schools and Libraries News Brief* (dated Jan. 22, 2010), *available at* <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=278> (last visited Aug. 3, 2011) (stating priority two funding was denied below 54 percent). *See also, 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 Aug. 3, 2011) (setting the funding year 2007 denial threshold); *Schools and Libraries News Brief* (dated July 6, 2007), *available at* <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=98> (last visited Aug. 3, 2011) (setting the funding year 2006 priority two threshold).

<sup>9</sup> For example, although USAC makes funding commitments up to the E-rate funding cap, for various reasons many schools and libraries do not use the full amount of their funding commitments, resulting in unused funding.

<sup>10</sup> *See Third Report and Order*, 18 FCC Rcd at 26935, para. 55. *See also Sixth Report and Order*, 25 FCC Rcd at 18780, para. 34-40; 47 C.F.R. § 54.507(a)(3).

<sup>11</sup> 47 C.F.R. § 54.507(a)(3)(ii).

<sup>12</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*).

4. On July 1, 2010, the Commission instructed USAC to carry forward \$900 million in unused funds to funding year 2010 (FY 2010).<sup>13</sup> To date, USAC has committed priority two funding from the 90 percent discount level to the 81 percent discount level, and has denied funding for applicants at the 79 percent discount level and below.<sup>14</sup> On January 26, 2011, USAC requested Commission approval to deny priority two service funding requests at the 80 percent discount level for FY 2010, stating that the remaining funds available for FY 2010 would not be sufficient to cover the requests for funds at that discount level.<sup>15</sup>

5. On February 2, 2011, FFL filed a petition asking the Commission to reject USAC's request. FFL argued that USAC's decision not to fund any requests at the 80 percent discount level is premature, and USAC should wait until unused funds from FY 2010 become available or use available funds currently designated for carry forward to FY 2011 for these requests.<sup>16</sup> FFL asserted that USAC's request to deny priority two requests at the 80 percent discount level was premature given that the demand at the 80 percent discount level for funding year 2010 is less than the approximately \$400 million in unused funds that USAC estimated at that time would be available for carry forward to FY 2011.<sup>17</sup> FFL also noted it would be premature for USAC to deny the 80 percent funding requests because there is a strong possibility that not all E-rate funding will be used by applicants and will become available later in the funding year to fund all requests at the 80 percent discount level.<sup>18</sup>

6. On May 2, 2011, USAC submitted its third quarter projections of demand and administrative expenses for the federal universal service fund.<sup>19</sup> According to USAC's projections at that time, \$600 million in unused E-rate funds from funding years 2003 through 2008 was available for carry forward to increase disbursements to schools and libraries for funding year 2011.<sup>20</sup> Additionally, on July 13, 2011, USAC filed a letter stating that it had identified funds in the schools and libraries reserve account sufficient to make commitments at the 80 percent level for FY 2010 priority two requests, in

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<sup>13</sup> *WCB Announces Carryover of Unused Schools and Libraries Universal Service Funds for Funding Year 2010*, Public Notice, 25 FCC Rcd 8483 (July 1, 2010) (2010 Carryover PN).

<sup>14</sup> On July 13, 2010, USAC received Commission approval to begin issuing FY 2010 priority two commitments at the 90 percent and higher discount levels and on September 23, 2010, USAC received approval to issue funding commitments at the 85 percent and higher discount levels. On December 14, 2010, USAC began issuing approvals at the 81 percent and higher while denying at the 79 percent and lower discount levels. See Schools and Libraries News Brief (dated Mar. 4, 2011), available at <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=352> (last visited Aug. 3, 2011).

<sup>15</sup> See USAC, Schools & Libraries Committee Meeting, Quarterly Meeting Minutes at 4, item a8 (Jan. 24, 2011), available at <http://www.usac.org/res/documents/about/pdf/board-minutes/sl-committee/2011/012411%20SL%20Meeting%20Minutes.pdf> (last visited Aug. 3, 2011). See also Email from Richard Belden, USAC to Steven Van Roekel, Federal Communications Commission (Jan. 26, 2011) (USAC Request to Deny Email) (stating that the remaining funds available are \$9 million and the demand is \$213 million).

<sup>16</sup> FFL Petition at 5-7.

<sup>17</sup> See Petition at 1. See also USAC Fund Size Projections for 2Q 2011 at 39 (Jan. 31, 2011), available at [http://www.usac.org/about/governance/fcc-filings/2011/Q2/2Q2011%20Quarterly%20Demand%20Filing%20\\_FINAL\\_%20\\_1.28.11\\_.pdf](http://www.usac.org/about/governance/fcc-filings/2011/Q2/2Q2011%20Quarterly%20Demand%20Filing%20_FINAL_%20_1.28.11_.pdf) (last visited Aug. 3, 2011) (USAC Third Quarter 2011 Fund Size Projection). Subsequently, however, USAC reported that \$600 million was available for rollover. See USAC Third Quarter 2011 Fund Size Projection.

<sup>18</sup> See FFL Petition at 1, 5-7.

<sup>19</sup> USAC Third Quarter 2011 Fund Size Projection.

<sup>20</sup> *Id.*

addition to the \$600 million available for carry forward.<sup>21</sup> Most recently, on August 2, 2011, USAC filed its fourth quarter projections, which estimate that a total of \$1.1 billion in unused E-rate funds from funding years 2003 through 2009 are available for carry forward.<sup>22</sup> That amount includes the funding USAC identified as available to make commitments at the 80 percent level for FY 2010.

### III. DISCUSSION

7. In this order, we first grant the FFL petition, in part, and direct USAC to make available funds for FY 2010 priority two requests at the 80 percent discount level. At the same time, we decline to adopt USAC's earlier request to deny funding at the 80 percent level in light of USAC's more recent acknowledgement that sufficient funds have been identified to fund applications for FY 2010 at the 80 percent level. On our own motion, we reverse our previous decision to deny priority two funding below 80 percent and direct USAC to make available funds for all FY 2010 priority two requests. We also announce a carry forward amount of \$850 million to increase disbursements for E-rate funding year 2011.<sup>23</sup>

8. *Priority Two Funding for Funding Year 2010.* We first direct USAC to use funds currently held in the schools and libraries program reserve accounts to make commitments for the priority two applicants at the 80 percent level for FY 2010, following the normal USAC application review and commitment process.<sup>24</sup> We base this decision on USAC's determination that there is currently sufficient funding in the schools and libraries reserve accounts to make commitments for all of the priority two applicants at the 80 percent level.<sup>25</sup> We find it is in the public interest to fund the 80 percent discount level for FY 2010 immediately, with the funds currently held in the program's reserve, rather than waiting until the de-obligations are completed at the end of the year.

9. We also direct USAC to use funds currently held in the schools and libraries program reserve accounts to make commitments for priority two applicants at all discount levels for FY 2010, following the normal USAC application review and commitment process. Although we previously directed USAC to deny requests below 79 percent for priority two in FY 2010,<sup>26</sup> we reverse this decision in light of USAC's announcement that there is currently additional funding available in the schools and

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<sup>21</sup> Letter from Richard A. Belden, Chief Operating Officer, USAC to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket No. 02-6 (July 13, 2011) (stating there are available and sufficient funds to make commitments at the 80 percent level for priority two applications in FY 2010) (July 2011 USAC Letter).

<sup>22</sup> See USAC Fund Size Projections for 4Q 2011 at 41 (Aug. 2, 2011), available at [http://www.usac.org/about/governance/fcc-filings/2011/Q4/4Q2011%20Quarterly%20Demand%20Filing%20\\_FINAL%208.2.11\\_.pdf](http://www.usac.org/about/governance/fcc-filings/2011/Q4/4Q2011%20Quarterly%20Demand%20Filing%20_FINAL%208.2.11_.pdf) (last visited Aug. 9, 2011) (USAC Fourth Quarter 2011 Fund Size Projection).

<sup>23</sup> Section 54.507(a)(3) of the Commission's rules requires that the E-rate carry forward announcement occur in the second quarter of each calendar year. On our own motion, we waive this section of our rules. See 47 C.F.R. § 1.3 (providing that the Commission's rules may be waived for good cause). Given the public interest in providing funding for priority two requests in FY 2010, we find that good cause exists to warrant a waiver of the second quarter deadline in this instance.

<sup>24</sup> To date, USAC has indicated they have reviewed 85 percent of all Form 471s at the 80 percent level, representing approximately 59 percent of the dollars requested. See USAC Request to Deny Letter.

<sup>25</sup> See July 2011 USAC Letter. See also USAC Fourth Quarter 2011 Fund Size Projection.

<sup>26</sup> See *supra* note 14.

libraries reserve accounts to fund all priority two applicants.<sup>27</sup> Therefore, we find it is in the public interest to fund the applications at all priority two discount levels for FY 2010 immediately, with the funds currently held in the program's reserve.

10. Committing the available funds as soon as possible is in the public interest, because it will allow more E-rate applicants to complete their projects more quickly. Given the current budgetary constraints that many schools and libraries are facing, it is particularly important to enable these communities to enhance their access to broadband services. We are not persuaded there is a need to wait until the end of the year, when all of the de-obligated funds are realized, to fund the applications at all priority two discount levels.<sup>28</sup> Accordingly, we deny the FFL petition to the extent it advocates waiting until later this year when unused funds from FY 2010 become available.

11. Furthermore, this action promotes the Commission's objective of distributing funds more equitably among E-rate applicants, especially when 90 percent recipients have already received their funding.<sup>29</sup> In the *Third Report and Order*, the Commission determined that unused funds from prior E-rate funding years should be made available for use in the next E-rate funding year.<sup>30</sup> The Commission adopted this framework in an effort to create predictability and to provide greater access to universal service support for communities in economic need.<sup>31</sup> Funding all discount levels enables the E-rate program to provide funding support for applicants that may not have received funding as often as the higher percentage discount level applicants. Many of these applicants also need support for internal connections and basic maintenance.<sup>32</sup> Moreover, funding all discount levels enables the E-rate program to better reach libraries, because many libraries are unable to qualify for discounts at the 90 percent level because of the way funding discounts are calculated for libraries.<sup>33</sup> We find that making available the funds that USAC identified is consistent with the Commission's rules, its purpose, and the Commission's desire for E-rate funds to be used effectively to maximize funding to program applicants.

12. Finally, we disagree with those commenters that oppose the FFL petition and argue that the Commission should not fund these applicants for FY 2010 because it will put the amount available for

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<sup>27</sup> See USAC Fourth Quarter 2011 Fund Size Projection at 41.

<sup>28</sup> See E-rate Central Comments; Kellogg & Sovereign Consulting, LLC, Comments, CC Docket No. 02-6 (Mar. 8, 2011) (Kellogg Comments); ALA Comments at 3; Great City Schools Comments at 2.

<sup>29</sup> See FFL Petition at 3-4. See also Neosho R5 School District, Comments, CC Docket No. 02-6 (Mar. 7, 2011); North Carolina Department of Public Instruction, Comments, CC Docket No. 02-6 (Mar. 7, 2011); Portland Public Schools, Comments, CC Docket No. 02-6 (Mar. 7, 2011) (supporting the FFL Petition).

<sup>30</sup> *Third Report and Order*, 18 FCC Rcd at 26932, para. 50-58.

<sup>31</sup> 47 U.S.C. 254(b)(2),(6), (h); 47 C.F.R. § 54.507(c). For a school to be eligible for an 80 percent discount, half to almost three-quarters of the school's children must be eligible for free or reduced price lunch. See USAC Website, Schools and Libraries, Discount Matrix, available at <http://www.usac.org/sl/applicants/step05/discount-matrix.aspx> (last visited Aug. 3, 2011). For a school in a non-rural area to receive a discount ranging from 50 percent to 70 percent, 20 percent to 50 percent of the school's students must be eligible for free or reduced price lunch. *Id.*

<sup>32</sup> *Id.* See also supra note 8.

<sup>33</sup> The discount rate for libraries is calculated based on the student enrollment and participation of an entire school district in which the library sits even though that boundary line may incorporate varying levels of poverty and include areas that the library does not actually serve. See American Library Association, Comments, CC Docket No. 02-6 at 4 (Mar. 7, 2011) (ALA Comments); E-rate Central Comments at 3; see also 47 C.F.R. § 54.505(b)(2).

funding the most needy schools and libraries at the 90 percent discount level for FY 2011 at risk.<sup>34</sup> These commenters claim that any action that risks funding the 90 percent discount level in FY 2011 should be denied.<sup>35</sup> Notwithstanding these arguments, FY 2011 carry forward funding will not be affected by our decision. As discussed below, USAC has identified \$1.1 billion available for use. Our decision to direct USAC to fund priority two services at all discount levels for FY 2010 will have no effect on the amount of carry forward funding previously identified as available for FY 2011 and will not jeopardize funding levels for FY 2011.<sup>36</sup> We therefore direct USAC to use the available funds identified by USAC to review the applications and make commitments at all discount levels for priority two E-rate requests for funding year 2010.<sup>37</sup> Section 54.507(a)(3) of our rules directs that unused funds be allocated to the next *full* funding year. Under application of this rule and consistent with USAC's practice, the newly identified unused funds would not be allocated until FY 2012. On our own motion, we waive section 54.507(a)(3) of our rules so that the funding can become immediately available, rather than held in reserve until 2012.<sup>38</sup> We find good cause exists to warrant a waiver and allow the unused funds to be used during FY 2010.

13. *Funding Year 2011 Carry-Forward.* The Commission stated in the *Third Report and Order* that the Wireline Competition Bureau would annually announce a specific amount of unused funds from prior years to be carried forward to the next funding year.<sup>39</sup> We direct USAC to carry forward \$850 million in unused E-rate funds from funding years 2003 through 2009 to increase disbursements for E-rate FY 2011. USAC estimates that demand for priority one services for FY 2011 is \$2.173 billion.<sup>40</sup> Absent a rollover of E-rate funds from prior funding years, USAC would be unable to fully fund priority two requests at even the highest discount level.<sup>41</sup> Accordingly, we find it is in the public interest to carry forward \$850 million of unused funds for use in E-rate FY 2011. As discussed above, we find good cause exists to warrant a waiver of section 54.507(a)(3) of our rules to allow the unused funds to be used during FY 2011.

#### IV. ORDERING CLAUSES

14. 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

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<sup>34</sup> See, e.g., Education and Libraries Networks Coalition (EdLiNC), Comments, CC Docket No. 02-6 (Mar. 7, 2011) (EdLiNC Comments); American Association of School Administrators (AASA), Comments, CC Docket No. 02-6 (Mar. 7, 2011) (AASA Comments); Council of Great City Schools, Comments, CC Docket No. 02-6 (Mar. 7, 2011) (Great City Schools Comments).

<sup>35</sup> See EdLiNC Comments; E-rate Central, Comments, CC Docket No. 02-6 at 2-3 (Mar. 7, 2011) (E-rate Central Comments); Milwaukee Public Schools, Comments, CC Docket No. 02-6 (Mar. 7, 2011).

<sup>36</sup> See July 2011 USAC Letter. See also Letter from Mel Blackwell, Vice President, USAC to Sharon Gillett, Bureau Chief, Wireline Competition Bureau, Federal Communications Commission (Apr. 12, 2011) (USAC Demand Letter FY 2011) (identifying the demand at various discount levels for FY 2011).

<sup>37</sup> We note that this decision is limited only to FY 2010, and this action should not be construed as an indicator of how funds may be allocated in future funding years.

<sup>38</sup> See 47 C.F.R. § 1.3 (providing that the Commission's rules may be waived for good cause).

<sup>39</sup> See *Third Report and Order* at paras. 52-58.

<sup>40</sup> USAC Demand Letter FY 2011 at 1.

<sup>41</sup> See *supra* note 4 (the E-rate cap for FY 2011 is about \$2.29 billion).

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.

15. 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)(3) of the Commission's rules, 47 C.F.R. § 54.507(a)(3), IS WAIVED to the extent provided herein.

16. 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

Sharon E. Gillett  
Chief  
Wireline Competition Bureau