

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

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	

**REPLY COMMENTS OF INCOMPAS**

INCOMPAS, by its undersigned counsel, hereby submits these comments in response to the FCC’s Further Notice of Proposed Rulemaking (“*Further Notice*”), which seeks comment on ways that the Commission can simplify and streamline the E-rate process.<sup>1</sup>

**I. Introduction and Summary**

INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber and fixed wireless providers that provide residential broadband internet access service, as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes, including regional fiber providers; transit and backbone providers that carry broadband and internet traffic; online

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<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism et al.*, Further Notice of Proposed Rulemaking, CG Docket Nos. 02-6, 96-45, 97-21 (rel. July 21, 2023) (“*FNPRM*”).

video distributors, which offer video programming over BIAS to consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services.

Many INCOMPAS members participate in the E-rate program (“E-rate”). As such, we appreciate the opportunity to provide the perspective of participating providers on how E-rate can be further streamlined and improved to help applicants, service providers, and the program overall.

## **II. INCOMPAS Supports Various Recommendations in the Record to Help Streamline and Improve E-rate.**

INCOMPAS supports the goals of E-rate in order to get fast, reliable, and affordable broadband to schools and libraries. We also support the fact that E-rate is open to competitive providers through a competitive bidding process. As explained by INCOMPAS member Uniti Fiber, “[t]he FCC’s competitive bidding requirements are the keystone to a fair, open, and competitive E-Rate program.”<sup>2</sup> Like Uniti Fiber, we also “support the FCC’s competitive bidding rules and welcome this opportunity to recommend several changes to improve and strengthen these requirements to further buttress efficient and effective competition.”<sup>3</sup>

Based on the record in this proceeding, INCOMPAS agrees with several recommendations related to improving the process for: (1) transitioning services from one provider to another during the E-rate funding year; (2) applicants being able to receive E-rate funding for mid-year bandwidth increases; (3) invoice deadlines, including the current waiver standard; and (4) red light status.

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<sup>2</sup> Uniti Fiber Comments, at 2.

<sup>3</sup> *Id.*

***(a) Simplifying the Process for Transitioning Services***

In the *Further Notice*, the Commission seeks comment on addressing the challenge faced by applicants and service providers regarding how to request E-Rate support when an applicant is transitioning services between two providers during the same funding year.<sup>4</sup> As explained by the SHLB Coalition, this situation is “particularly difficult when the service to which an applicant transitions is more expensive, causing an increase in the amount of E-rate support the applicant would receive.”<sup>5</sup> INCOMPAS supports SHLB’s recommendation for the Commission to “adopt a specific, transparent process so that applicants know what they need to do when transitioning between service providers.”<sup>6</sup> When thinking through a process for applicant and service providers to transition services during the funding year, the Commission should keep in mind the goal of ensuring that “the post-commitment change happens on a timely basis so that applicants can be timely paid on their invoices.”<sup>7</sup> Relatedly, INCOMPAS supports SHLB’s recommendation for the Commission to direct USAC to fund the full month of service when the cutover between service providers occurs in the middle of the month in order to prevent penalizing an applicant for mid-month transitions.<sup>8</sup> Overall, it will be important for the FCC to lay out a specific process for applicants to more easily be able to transition services during the funding year without the looming risk of non-payment.

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<sup>4</sup> *FNPRM*, at para. 44.

<sup>5</sup> SHLB Comments, at 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.*

***(b) Creating a Process for Mid-Year or Mid-Contract Bandwidth Increases***

In the *Further Notice*, the FCC seeks comment on adopting a limited exception to the competitive bidding rules by allowing applicants to seek bandwidth increases in between E-Rate funding cycles without the need for a new competitive bidding process.<sup>9</sup> INCOMPAS welcomes such an exception in order to more easily allow applicants to access the higher bandwidth they need when they need it.

As SHLB explains, applicants often face early termination liability provisions that require them to pay the entire remainder of the contract. As such, without a new process, an applicant cannot always simply re-bid before the next funding year to increase its bandwidth.<sup>10</sup> However, we recognize that there is a delicate balance here between making sure applicants do not evade the competitive bidding process while also ensuring that schools and libraries do not have to wait for a new rebidding process if they unexpectedly require higher bandwidth. As such, we find SHLB's recommendation to be reasonable: in cases when the pricing for a specific bandwidth is neither included on the Form 470 or in the contract between an application and service provider, the new E-rate eligible cost could be determined by calculating the price in some reasonable way based on the price of the original bandwidth.<sup>11</sup> This way, if an applicant needs more bandwidth that was not on the original bid or contract, the FCC can set up a process to make sure the price is still aligned with the original bid. It is important for the integrity of the program that applicants are not stuck without the ability to increase bandwidth either during a funding year or during a

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<sup>9</sup> *FNPRM*, at para. 51.

<sup>10</sup> *Id.*

<sup>11</sup> SHLB Comments, at 12.

term of a multiyear contract, which would align with the goals of getting fast, reliable, and affordable internet to all.

***(c) Improving the Invoicing Process for Deadline Waivers***

In the *Further Notice*, the Commission seeks comment on a proposal to slightly modify the invoice filing deadline extension rule. The proposal would allow applicants to request a one-time 120-day extension of the original invoice deadline from USAC when the request is made within 15 days of the original invoice filing deadline date. This would allow applicants or service providers to request this extension if they realize they just missed an invoice filing deadline, which differs from the current “extraordinary circumstances” standard.<sup>12</sup> INCOMPAS supports the Commission adopting this 15-day grace period and eliminating the “extraordinary circumstances” standard for waiving the invoicing deadline.

We agree that the Commission should adopt a short grace-period and instead use the Commission’s general public interest waiver standard as it does for all other E-rate deadlines in order to not disproportionately punish a program participant that may have missed the invoicing deadline for a myriad of reasonable reasons that do not necessarily constitute an “extraordinary circumstance.” This could include changes in personnel responsible for E-rate applications or accidentally omitting one invoice amongst dozens filed. It is worth noting that SHLB warns that this change would be “the most important action in this proceeding that the Commission can take to ensure that applicants receive funding as Congress intended.”<sup>13</sup>

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<sup>12</sup> *FNPRM*, at paras. 71-72.

<sup>13</sup> SHLB Comments, at 19-20.

***(d) Improving the Process for Red Light Status***

Relatedly, INCOMPAS agrees with SHLB and Uniti Fiber's recommendations to change the current process that dismisses pending E-rate submissions if a participant is on red light status. We agree with Uniti Fiber's recommendation that, rather than dismissing requests, the FCC should instead "instruct USAC to *hold* any pending E-Rate request while the participant works to correct their red light status."<sup>14</sup> Uniti Fiber astutely explains that "no matter how diligent, human errors or banking delays still occur."<sup>15</sup> Moreover, "providers often do not understand the reason for dismissal in time to correct the issue," and by that time "the only action available is to file an appeal to determine the reason behind the dismissal, which is inefficient and a waste of time for both the provider and USAC."<sup>16</sup>

As shown in the record, there are real risks to dismissing, rather than holding, a submission. For example, As SHLB explains, even if the debt is paid shortly after the deadline identified by USAC, due to the timing of the annual E-rate application filing window, dismissing a pending funding request after the funding window has closed can result in the loss of all E-rate support for the applicant for the entire funding year.<sup>17</sup> Moreover, Uniti Fiber explains that "dismissing invoices for red light status increases the burden on both the provider and USAC to resubmit and re-review the thousands of invoices that may be pending and dismissed for a red light that results from an error that is quickly corrected."<sup>18</sup> As such, we agree with the

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<sup>14</sup> Uniti Fiber Comments, at 6 (emphasis added).

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.*

<sup>17</sup> SHLB Comments, at 30.

<sup>18</sup> *Id.* at 7.

recommendation that the Commission should “adopt specific procedures for USAC to follow when seeking recovery of funding and to revise the consequences of the ‘red light’ rule so that applicants do not lose an entire year’s worth of funding after their debt to the federal government has been repaid.”<sup>19</sup>

Making the reasonable changes requested regarding invoice deadline waivers and red light status applications would greatly benefit E-rate and those involved in the program’s success.

### **III. Conclusion**

INCOMPAS applauds the Commission for seeking changes to further streamline and improve the E-rate program. For the foregoing reasons, we encourage the Commission to make the changes highlighted from the record in order to benefit applicants, service providers, USAC, and the overall E-rate program.

Respectfully submitted,

*/s/ Lindsay Stern*

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<sup>19</sup> SHLB Comments, at 25.