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ONE HUNDRED EIGHTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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October 27, 2004

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BUD ALBRIGHT, STAFF DIRECTOR

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Powell:

I am writing regarding changes made by the Federal Communications Commission (FCC) in consultation with, and perhaps at the direction of, the Office of Management and Budget (OMB) that has resulted in withholding of hundreds of millions of dollars in commitments for Internet funding for schools, libraries, and rural healthcare facilities under the E-rate program. As you know, the E-rate program has played a crucial role in bringing modern communications services to schools and libraries around the country. Without E-rate support, critical links to the Internet will be ruptured and other promised connections will not be realized. But, I understand that E-rate funding commitments have been suspended since August 3, 2004, because of your decision to suddenly subject the E-rate program to an arcane interpretation of the requirements of the Anti-Deficiency Act, a law that has been in effect for the entire life of the program.

I am assured that money is available. The Universal Service Fund for Schools and Libraries has been so solvent that there was cash on hand of over \$3 billion at the beginning of fiscal year 2004 and over \$2 billion when this decision was reached. Nonetheless, critical commitments have stopped. Attached are two lists of current funding commitments held up by the Universal Service Administrative Company that total in excess of \$459 million since August 3, 2004.

Given the national importance of the E-rate program and the negative impact your decisions have had on program beneficiaries, please respond to the following:

1. What was the legal basis for the Commission's decision to impose new accounting procedures on the E-rate program and in so doing subject the program to the Federal Anti-Deficiency Act? Because both government accounting rules and the Anti-Deficiency Act have been consistent since the initiation of the E-rate program, please also provide the legal basis for not imposing those requirements prior to your recent decision.

2. Was the decision driven by the Commission's own initiative or under a directive from the OMB? If the latter, please provide a copy of the written directive from the White House. If, as I have been informed, you received no written instructions from OMB regarding the decisions, please provide a list of the White House officials that provided oral instructions to your office as well as an explanation of why you felt legally bound to follow directives that OMB would not put in writing.
3. Please also provide a legal analysis of why the FCC, as an independent agency, must take direction from the Administration regarding the collection, storage, and use of E-rate funds.
4. Will the FCC need to raise the percentage charged ratepayers on their long distance phone bills to compensate for the effects of your decisions? If so, how much and when?
5. Commissioners Adelstein and Copps have expressed dismay at your actions regarding these funds. Did you consult with them before making your decision? If not, why not?
6. Please detail all investment activity affected by your decision relating to the application of the Anti-Deficiency Act. On October 6, 2004, your office issued a press release trumpeting a decision to alleviate a temporary cash flow problem in the E-rate program by instructing USAC to liquidate \$210 million in investments that were made using cash balances. Was USAC forced to liquidate over \$2 billion in securities money markets that invested only in government obligations and other securities backed by federal government guarantees?
7. Is it true that the \$210 million liquidation announced on October 6 had no effect on the ability of USAC to make the commitments that are being held up? If the liquidation had no bearing on the stoppage of funds, please explain why such a statement was made in the press release.
8. The press release states that the FCC "is working . . . to get funds flowing as soon as possible while still protecting the fund." Please explain what, if any, danger the fund was in before your decisions relating to its investments and the application of the Anti-Deficiency Act.
9. The press release also states that you ordered the application of these "stringent government accounting standards . . . to protect the integrity of the \$2.25 billion program." How does delaying commitments to American schools, libraries, and rural healthcare centers from a financially solvent program return or maintain the integrity of the E-rate program?
10. When will the suspension of E-rate funds be lifted and when can schools that have been approved for funding expect to see these funds?

The Honorable Michael K. Powell
Page 3

11. What actions, if any, will the Commission take in the future to ensure that E-rate funds will be available on a timely basis?

I appreciate your attention to these important matters. If you have any questions, please have your staff contact David Nelson of the Committee Democratic staff at (202) 226-3400.

Sincerely,



JOHN D. DINGELL
RANKING MEMBER

Attachments

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Fred Upton, Chairman
Subcommittee on Telecommunications and the Internet

The Honorable Edward J. Markey, Ranking Member
Subcommittee on Telecommunications and the Internet

The Honorable Peter Deutch, Ranking Member
Subcommittee on Oversight and Investigations