

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Children's)	CC Docket No. 96-45
Internet Protection Act)	FCC 01-31
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**COMMENTS OF THE
CONSORTIUM FOR SCHOOL NETWORKING
and
THE INTERNATIONAL SOCIETY FOR
TECHNOLOGY IN EDUCATION**

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I. EXECUTIVE SUMMARY

CoSN and ISTE seek regulations from the FCC that provide schools and libraries with the greatest degree of flexibility and autonomy in compliance with the CHIP Act. Both CoSN and ISTE have expressed concern about the role of the federal government in implementing a one-size-fits-all policy for Internet access in schools and libraries. Local schools and school districts have enjoyed enormous benefits through creative use of the Internet as an educational tool, and have sought to guide and protect children in a myriad of ways consistent with local educational philosophies, available resources, and community values. While we remain concerned about these issues, it is our duty to our members to provide them with the best possible compliance guidance as they attempt to implement these regulations. For this reason, CoSN and ISTE seek clarification and guidance on the following issues so that our members may comply with the requirements set forth by the CHIP Act:

- *Certification Forms* – CoSN and ISTE support simple checkbox-style certification on the existing FCC Form 486, seek rules that allow entities to amend their certification using Form 500, and oppose certification using Form 471.
- *Compliance Timelines* – The Commission should recognize E-Rate Program Year 5 as the appropriate starting point for statutory compliance, because Year 4 began before the passage of the CHIP Act, with the submission of Form 470, and in many cases, Form 471. In addition, the Commission should mandate a certification deadline pursuant to the CHIP Act as the later of 120 days after the beginning of program Year 5 or 10 days after the beginning of receipt of service.
- *Group Certification* – In the case of large school districts and consortia applications, the Commission should allow for separate certification statements by recipients so that delay by one recipient is not detrimental to compliant recipients.
- *Internet Safety Policy Deadlines and Timing* – CoSN and ISTE request clarification about the timing of requirements and certification deadlines for Internet safety policies mandated by the statute. This timing should be consistent with the later deadlines related to technology implementation.

- *Scope of Requirements for E-Rate, ESEA, or LSTA* – CoSN and ISTE request clarification about the scope of the CHIP Act’s E-Rate provisions and the differing applicability of requirements under E-Rate, ESEA, and LSTA.
- *Internet Monitoring* – The Commission should not set a national standard for Internet use monitoring and instead should protect children’s privacy by emphasizing the Congressional rejection of monitoring using technological means. The Commission should allow local decision makers the opportunity to protect student privacy by devising local rules.
- *Filters* – The Commission should not require Internet filters for computers not used by students or the general public, since doing so will not protect children in any way, and will add economic and computing resource burdens on poor schools and libraries.

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II. INTRODUCTION

The Consortium for School Networking (“CoSN”) and the International Society for Technology in Education (“ISTE”) hereby offer these comments in response to the Commission’s Notice of Proposed Rule Making in the above-captioned proceeding (the “NPRM”), released February 1, 2001, concerning implementation of the Children’s Internet Protection Act (the “CHIP Act”).

CoSN and ISTE are two of the most prominent non-profit, member-based organizations in the educational technology arena. ISTE is the leading organization for educational technology professionals. With its affiliates, ISTE's membership exceeds 75,000 teachers, technology coordinators, administrators, teacher educators and other

educational technology professionals. ISTE initiatives include the National Educational Technology Standards (NETS) Project, which identifies appropriate standards for the integration of technology into curricula, provides technology support, and develops standards for student assessment and evaluation of technology in curricula. Many states, local schools, higher education programs, and school districts are currently using both the NETS for Students and NETS for Teachers.

CoSN is a non-profit organization that promotes the use of new technologies to improve K-12 learning and provides resources and support for educational technology leaders at the state and local level. CoSN's membership includes national education associations, local school districts, state education agencies and individual community leaders that are committed to integrating technology into the classroom. CoSN has launched a number of educational technology partnerships, including EDvancenet (in partnership with MCI WorldCom and the National School Boards Foundation), which provides school leaders and policymakers with the tools and information to make strong decisions in support of new technologies in K-12 classrooms. CoSN also initiated the "Taking Total Cost of Ownership (TCO) to the Classroom" project to help school leaders understand and budget for the long-term costs involved in school networking. These costs include teacher training, maintenance, and other costs of ownership that are more difficult for schools to determine than the purchase price for a piece of equipment or the monthly fee for Internet access. Most recently, CoSN launched the "Safeguarding the Wired Schoolhouse" project, which will provide school leaders with vendor-neutral guidelines for evaluating the various software options available to help protect students from inappropriate online materials.

Much of CoSN and ISTE's constituency is made up of entities that depend on E-Rate funding for access to and use of the Internet as a tool for learning and research. The CHIP Act requires compliance for any school or library receiving funding or support under the E-Rate program for "Internet access, Internet service or internal connections."¹ The E-Rate program provides discounts on these services, and also funds "telecommunications services" commonly referred to as "Plain Old Telephone Service" or POTS. In the first two years, \$3.66 billion in discounts have brought the Internet and new information technologies to tens of thousands of schools and libraries.²

This discounted service is invaluable to many of CoSN and ISTE's members. For example, the San Bernardino School District (SBSD) in San Bernardino, California, received a discount level of 84%, amounting to a \$20,000,000 discount during Year One of the E-Rate program and \$13,000,000 in Year Two.³ The SBSB serves a large, poor, urban community with a high percentage of Latino students and families for whom English is not their primary language. The district schools do not have much money, but the E-Rate program has helped to provide quality educational opportunities through technology. With funding help from E-Rate discounts on phone services, SBSB has been able to wire 97 percent of its classrooms for the Internet.⁴ This enables entire classes to use the Internet in their daily exercises. In addition, teachers are using the Internet to supplement traditional learning materials and expand the resources available for teaching

¹ Section 254(h)(5) of the Communications Act of 1934. The filtering mandate does not apply to entities receiving E-Rate discounts "only for purposes other than the provisions of Internet access, Internet service, or internal connections," such as those institutions receiving funding only for "telecommunications services." CHIP Act, Sec. 1721(a)(5)(A)(ii).

² Report from Education and Library Networks Coalition (EdLiNC), available at <http://www.edlinc.org/pubs/eratereport2.html>. This report found that by increasing involvement in and opportunities for learning, the E-Rate program is spurring demand for and deployment of the Internet in communities across America, most notably those that could not otherwise afford access to the Internet.

³ *Id.*

and learning. The SBSB plans to offer use of its facilities to the community after-hours and to offer classes in computer literacy and other adult education opportunities, especially for ESL adults.

The SBSB represents just one of many school districts, schools, and libraries that have come to depend on the E-Rate program for providing Internet and networking services. In its ruling, CoSN and ISTE urge the Commission to take into account the widespread detrimental impact of overreaching, overbroad regulations controlling recipients of E-Rate funding. The E-Rate program has been a great success in providing schools and libraries with service they could not otherwise afford. The Commission must be careful, therefore, not to form rules making compliance with the CHIP Act so burdensome and costly that recipients cannot comply, thereby cutting off E-Rate funding for thousands of schools and libraries.

III. Response to NPRM Para. 3: The Commission should allow for simple check box certification and should also offer the option for recipients to amend at a later date so as not to withhold funding from compliant consortium members.

A. A simple checkbox certification should be added to an existing FCC form.

CoSN and ISTE support the proposal to add a simple checkbox to an existing FCC form, such as Form 486, so recipients can attest to compliance with, or exemption from, the CHIP Act. However, CoSN and ISTE request the rules allow for this form to be amended up until the compliance deadline. CoSN and ISTE agree with the Commission that the required certifications should impose the least administrative burden on recipients. Permitting recipients to certify under the CHIP Act using an existing FCC

⁴ *Id.*

form, with an option to amend,⁵ will help ease the burden of compliance for schools and libraries and will reduce paperwork for the Commission.

While CoSN and ISTE support the use of a simple statement of compliance or non-coverage on an existing form, similar to the certifications currently required for E-Rate applicants, we also urge the Commission to allow members of a recipient consortium to make separate certifications where the recipient believes it appropriate. For example, large school districts and consortium-style recipients should have the option to file separate certification provisions given the difficulty in assessing compliance with the CHIP Act. Large districts have many computers that they must assess if they are to comply with the statute. Likewise, consortium applications often include disparate districts with separate staffs, networks and policies.

The appropriateness of separate or joint certification is best determined by the entity filing the application. Therefore, the Commission should expand its rule to allow separate filings and amendments to the certification form at the discretion of the recipient. The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) already has a mechanism in place to address this issue, namely the Program Integrity Assurance Team (PIA Team). The PIA Team's duties could be extended to assist with conflicts arising from separate certifications. This would greatly increase flexibility for schools trying to comply with the Act while maintaining, to the extent possible, the efficiencies of the Commission's proposal.

CoSN and ISTE seek a simple check box certification with an option to amend, and the flexibility of joint or separate filings at the discretion of the recipient.

⁵ See Sec. IV for recommendations about which FCC forms are appropriate for certification and amendment purposes.

B. The Commission should ensure funding is not withheld from compliant consortium members due to other members' failure to certify.

CoSN and ISTE urge the Commission to ensure that where a recipient of funding is comprised of separate entities, the failure of one party to certify, or otherwise fail to comply with the CHIP Act, will not interfere with the disbursement of funds to complying entities. In the case of a consortium, for instance, CoSN and ISTE urge the Commission to rule that certification by all members is not a prerequisite for funding compliant members. As discussed above, the rules should allow consortia to file a single certification where all members are able to either certify they are in compliance or to state that they are not covered by the statute. However, where individual members of a consortium have different answers to the question of compliance, the rules should allow for separate certifications. Funding should similarly be disbursed to individual recipient members or the total of recipient members depending upon the certifications filed. It is important that members of a consortium not suffer a withholding of funds due to circumstances outside their control. This added flexibility will ensure that CHIP-compliant members of a consortium are not penalized if their fellow applicants fail to certify.⁶

CoSN and ISTE ask the Commission clarify that certified and otherwise compliant members of recipient consortia and school districts will receive funds despite the non-compliance or lack of certification of other members of the consortia or school district.

⁶ See Sec. V.

IV. Response to NPRM Para. 4: The preliminary certification process should begin with Year 5, and the certification deadline pursuant to the CHIP Act should be the later of 120 days after the beginning of the program year or 10 days after the beginning of receipt of service.

A. The Commission should recognize Year 5 as the first funding year for which certification is required.

CoSN and ISTE disagree with the Commission's view that the first funding year open to regulation under the CHIP Act is program Year 4 and instead maintain that the preliminary certification process should start with Year 5. The statute requires certification of compliance by recipients for the first program year after 120 days following the passage of the Act, or April 20, 2001. Critical elements of the E-Rate program took place with regard to Year 4 well before the "120 days following the passage of the Act." Because program Year 4 was substantially underway before this Act was passed, the "first program funding year" as indicated by the statutory language should be considered Year 5, not Year 4. If the Commission chooses to apply the Act retroactively, it would result in a severe disruption of the process currently in place for schools and libraries.

The application process for E-Rate discounts is highly complex. Application information for Year 4 was first distributed in Spring 2000. Form 470, which is the initial form required from applicants, could be filed by applicants beginning as early as July 2000, and it had to be filed by mid-December 2000. The formal "window" during which Form 471, the main application form, had to be submitted for Year 4 funding opened on November 6, 2000 and closed on January 18, 2001. Many, if not most, schools and libraries have already completed the planning process and submitted technology plans for Year 4. In addition, most have completed budget approvals, signed

contracts or begun procurements relating to Year 4, and trained staff based on plans formulated pre-CHIP Act.

Given the language of the statute, and in order to avoid disruption to the current budgetary plans of schools and libraries, the Commission should recognize Year 5 as the first funding year affected by the CHIP Act.

B. FCC Form 486 should be used, subject to amendment by Form 500, thereby ensuring the certification deadline pursuant to the CHIP Act as the later of 120 days after the beginning of the program year or 10 days after the beginning of receipt of service.

CoSN and ISTE support the Commission's proposed use of FCC Form 486, the Receipt of Service Confirmation Form, for initial certification, however we oppose the subsequent use of FCC Form 471 for future years and instead request the rule continue the use of Form 486, subject to amendment by Form 500. Form 471 is not an appropriate means of certification, because it would force schools and libraries to comply with the CHIP Act's regulations before they receive funding under E-Rate. If an entity does not receive E-Rate discounts, it is not bound by the statute. Therefore, by endorsing the use of Form 471, the Commission would be requiring schools to comply with a statute before these entities could ascertain whether such compliance was even applicable.

The E-Rate application process is already a complicated, multi-step process. Applicants must fill out a minimum of three separate forms: Form 470, Form 471, and Form 486. The first leg of this process, the Form 470, is essentially a bidding process, by which the connectivity needs of schools and libraries may be reviewed by prospective Internet and related technology suppliers. The second phase, Form 471, is a request for funding. The 486 form is a confirmation of receipt of service, which, in turn, serves as

authorization for the release of funds to the service providers. In addition, some applicants fill out Form 500, which is used to amend the Form 486. Historically, Form 500 has primarily been used when a company with which a school or library was doing business either goes out of business or changes the pricing for covered services.

In light of the already confusing nature of the application process, CoSN and ISTE urge the Commission to adopt a minimally burdensome approach. We suggest a simple certification process on the Form 486 and amended by Form 500. This would be the most reasonable and flexible way to apply the requirements of the statute.

Applicants file a Form 486 every funding year as they begin to receive service. Given the current funding year structure, the majority of Form 486s will be filed with the SLD in July, since the funding year stretches from July 1 to June 30. Furthermore, because applicants arguably have until October 1 to actually certify, a certification should be part of Form 500, and applicants should be able to file that form, amending the 486, to certify their compliance with the statute up until the deadline.

The certification language on Forms 486 and 500 should mimic the language used in the E-Rate program for technology planning certification.⁷ Currently, applicants must certify that they have a technology plan, are covered by a technology plan, or will have a technology plan in place by the time they receive funding. We suggest that similar language be used for the filtering certification.

Since this is a new requirement to which many schools and libraries will not be accustomed, we suggest that the Commission direct the SLD to follow up with applicants prior to the deadline. In particular, we suggest that the SLD contact each and every

⁷ See SLD's Technology Certification Form, available at <http://www.sl.universalservice.org/apply/2form.asp>.

applicant who has filed Form 471 but has not certified their compliance with the filtering requirements. On the Form 471, applicants indicate their preferred contact method, and we suggest that the Commission use that method (US Mail, e-mail, or fax) to contact each applicant who has not certified their compliance and send them a notice that compliance is mandatory by October 1 and that noncompliance will mean a termination of their E-rate discounts. This will help to ensure that as many schools and libraries as possible do indeed come into compliance by the statutory deadline.

V. Response to NPRM Para. 5: The Commission should allow recipients to determine whether certificates are filed by individual entities or by districts or consortia.

The Commission should allow recipients to file certificates individually or by district or consortia. Leaving this determination to the recipients will provide maximum flexibility to school districts and consortia recipients by allowing those with similarly situated members to submit one certification and those with diverse members to submit multiple certifications.⁸

Similarly, CoSN and ISTE urge the Commission to mandate that certification by all members of the consortium should not be a prerequisite to funding. The rules should allow for separate filings when some consortium members are covered by the CHIP Act and are in compliance, others are covered but seeking a waiver, and still others are not covered at all. The Commission should promulgate rules that maximize flexibility on this issue. Where all members of a consortium are able to either certify they are in compliance or state that they are not covered, the rules should allow them to file a single certification. However, where individual members of a consortium have different

answers to the question of compliance – or for other reasons choose to file separately – the rules should allow for separate certifications. This added flexibility will ensure that CHIP-compliant members of a consortium application are not penalized when their fellow applicants have yet to certify. Some entities within a consortium may have limited resources that impede their compliance and therefore their certification, while others may be able to comply readily. It is important that members of a consortium not suffer the withholding of funds due to circumstances outside their control.

CoSN and ISTE recommend that the Commission allow recipients autonomy and flexibility during the certification process by permitting consortia members to determine whether filings should take place on an individual basis or should occur by district or consortium.

VI. Response to NRPM Para. 6: The Commission should provide clarification about the timing requirements and certification deadlines for Internet safety policies mandated by the CHIP Act.

CoSN and ISTE agree with the Commission’s reading of the statute regarding mandatory Internet safety policies for both minors and adults. The timing requirements set forth in 254(h)(5)(E) and 254(h)(6)(E) of the Communications Act of 1934⁹ seem to apply only to certification under subparagraph (B) and (C).

CoSN and ISTE request clarification regarding whether certification deadlines for an Internet safety policy under 254(1) are the same as those outlined in 254(h)(5)(E) and (6)(E). In complying with the legislative intent of the CHIP Act, no part of an Internet

⁸ See III above.

⁹ 47 U.S.C. 254(h).

safety policy should be required until October 28, 2002.¹⁰ In reading the statute as a whole, CoSN and ISTE maintain that a deadline set for 120 days after enactment of the CHIP Act is unreasonable and even impossible. A compliance date of 120 after enactment would require compliance from recipients concurrent to the date that the Commission issues its rules. Schools and libraries cannot conform to a set of standards and rules that have yet to be promulgated.

Furthermore, any requirement implemented April 20, 2001 would be applied to funding for Year 3, whose application process, funding decisions, and release of funds were completed or well underway before the passage of the CHIP Act. On April 20, 2001, Year 3 recipients will have less than four months of E-Rate support remaining. Adding a new requirement for funding at that time would be both absurd and unreasonable.

The Commission should interpret the requirements for all of these Internet Safety Policy elements consistently, and should begin to plan for and require them of schools and libraries with the administration of Year 5.

Congress did not intend to require inconsistent compliance deadlines. Congress provided one deadline which should be applied to all E-Rate recipients: 120 days after the beginning of the first funding year following passage of the CHIP Act, or October 28, 2002. Therefore, CoSN and ISTE urge the Commission to allow the maximum amount of time for schools and libraries to formulate an Internet safety policy. The Commission's rules should set a deadline for compliance of October 28, 2002.

¹⁰ This dates are consistent with CoSN and ISTE's position that Year 5 should be the first funding year for which the Commission requires certification under the CHIP Act. See Sec. 5.

VII. Response to NPRM Para. 7: Remedial provisions should parallel procedures already in place.

CoSN and ISTE do not believe the Commission should promulgate new rules to implement the remedial provisions of the CHIP Act. Currently, there is a process used by SLD to address the problem of non-compliance, namely Program Integrity Assurance. CoSN and ISTE believe that the PIA team has acted in a way that is administratively efficient and fair to applicants and should be trusted to continue doing so with regard to the additional requirements of the CHIP Act. Just as the certifications should mirror existing forms and form filing processes, the processes for remedying errors should also be based on the SLD's existing procedures for dealing with problematic applications. By using the SLD's Program Integrity Assurance resources to remedy issues with the filtering certification, the continued integrity and accuracy of the program can be assured, and applicants would not be summarily removed from the program for simple mistakes or oversights.

VIII. Additional concerns not specifically raised by the Commission.

A. The Commission should provide guidance regarding the scope of E-Rate provisions and differing compliance requirements under E-Rate, ESEA, and LSTA.

CoSN and ISTE request clarification regarding the scope of E-Rate coverage for their constituents.

1. Institutions receiving E-Rate funding only for telecommunications services should not be subject to regulation under the CHIP Act.

CoSN and ISTE request the Commission's rules reflect that institutions receiving E-Rate funding only for telecommunications services, such as simple telephony services,

are not subject to regulation under the CHIP Act. There are three main areas for which applicants can receive E-Rate funding: Internet access, internal connections and networking, and telecommunications services.¹¹ The CHIP Act requires compliance for any school or library receiving funding or support under the E-Rate program for Internet access, Internet service or internal connections. However, the CHIP Act's requirements do not apply to entities receiving E-Rate discounts "only for purposes other than the provisions of Internet access, Internet service, or internal connections."¹² CoSN and ISTE urge the Commission to clarify this point for schools and libraries in its rulemaking.

2. CoSN and ISTE seek clarification on the differing requirements under E-Rate, ESEA and LSTA and the obligations of entities receiving funding from multiple programs.

Many of ISTE's and CoSN's members receive funding from multiple programs covered by the CHIP Act. It is CoSN and ISTE's understanding that the CHIP Act's requirements for schools are as follows:

- If a school receives E-Rate support only, it must comply only with E-Rate provisions.
- If it receives ESEA support only, it must comply only with ESEA provisions.
- If it receives LSTA support only, it must comply only with LSTA provisions.
- If it receives E-Rate, ESEA and LSTA support, it must comply only with E-Rate provisions.
- If it receives both E-Rate and ESEA support, it must comply only with E-Rate provisions.¹³
- If it receives no support from E-Rate, ESEA or LSTA, there are no requirements with which it must comply under the CHIP Act.

Additional clarification by the Commission is needed for instances where a school receives funding for different services under various programs. For instance, if a school

¹¹ Section 254(h)(5) of the Communications Act of 1934.

¹² CHIP Act, Sec. 1721(a)(5)(A)(ii).

¹³ Assuming that E-Rate funding is for Internet services, access or internal connections, not solely for telecommunications services.

receives E-Rate funding for “telecommunications services” only and ESEA funding for either computers that access the Internet or the direct costs associated with access to the Internet, CoSN and ISTE read the CHIP Act as requiring compliance only with ESEA regulations. However, if the school receives E-Rate funding for “Internet access, Internet services, or internal connections,” in addition to support from ESEA, CoSN and ISTE read the CHIP Act as requiring compliance with E-Rate provisions. CoSN and ISTE request clarification on this issue.

Likewise, CoSN and ISTE’s understanding of the CHIP Act’s requirements for libraries is as follows:

- If a library receives E-Rate support only, it must comply only with E-Rate provisions.
- If it receives LSTA support only, it must comply only with LSTA provisions.
- If it receives both E-Rate and LSTA support, it must comply only with E-Rate provisions.¹⁴
- If it receives no support from E-Rate or LSTA, there are no requirements with which it must comply under the CHIP Act.

Again, CoSN and ISTE request clarification where a library receives funding for various services from more than one title. If a library receives E-Rate funding for “telecommunications services” only and LSTA funding for computers that access the Internet, CoSN and ISTE read the CHIP Act as requiring compliance with LSTA regulations. Otherwise, regulations under E-Rate seem to apply. CoSN and ISTE request clarification or correction on this issue.

B. Filters should not be required for computers that are not open to use by the general public and those that serve only administrative purposes.

CoSN and ISTE ask the Commission to promulgate a rule stating that filtering

¹⁴ Assuming that E-Rate funding is for Internet services, access or internal connections, not solely for telecommunications services.

software need not be installed on internal networking devices and servers as well as computers used for administrative purposes and not accessible by students or the general public. Requiring filtering technologies to be installed on machines inaccessible to the public and used solely for administrative purposes will needlessly burden schools and libraries and will in no way advance the goal of protecting children. Many vendors of filtering software charge on a per-computer basis, and the CHIP Act forbids the use of E-Rate funds for the purchase of technical protection measures.¹⁵ Thus, requiring filters on all computer systems will add a wasteful economic burden to our nation's poorest schools and libraries without furthering the goals Congress set out in the CHIP Act. In addition to this financial burden, all filtering technologies tax the computer systems on which they are installed. Computer memory (RAM), processor power and disk space all stand to be effected. Aging computers used by teachers and administrators and mission-critical network servers should not have their resources sapped when the general public or students do not use them.

CoSN and ISTE recommend that the Commission's rules clearly state that the filtering requirements do not apply in the following cases: (1) for computers and network devices in schools not open to use by the general public, and (2) for computers in library consortia, library networks and other library entities that do not directly serve the general public. Congressional intent under the CHIP Act will be satisfied by the filtering requirements as they apply to other computers. CoSN and ISTE believe that the Commission will still fulfill Congress' goals under the CHIP Act in promulgating these rules because they will not effect students or the general public.

¹⁵ Sec. 1721(g)

C. Given conflicting statutory provisions on monitoring and tracking, the Commission should allow schools and libraries to protect children's privacy by devising local policies.

CoSN and ISTE ask the Commission not to set a national standard on the supervision of student Internet use and instead preserve the policy-making autonomy of local schools and libraries in this area. If improperly implemented by the Commission, the CHIP Act's Internet monitoring provisions¹⁶ stand to expose the personal information and undermine the privacy of our nation's students. Such a policy will be in direct conflict with recent congressional action to protect children's privacy in the online environment, the Children's Online Privacy Protection Act.

A national rule that requires or seems to require technical monitoring and logging of Internet use will especially endanger students given a recent court decision in New Hampshire.¹⁷ Judge Gillian L. Abramson, Rockingham County Superior Court, NH, allowed a concerned parent to access the Internet use logs generated by students at a local school.¹⁸ The court ruled that student privacy was not implicated in the Web addresses of the sites they visit. However, some URLs¹⁹ can contain a user's personal information such as name, address, telephone number, email address, age and other facts if the user has entered in such data into a website. Thus, if monitoring is required by the Commission's rules, a child predator or a marketing company could potentially gain access to this personal information by obtaining access to Internet use logs under state law. URLs also denote where a given student has been and what Websites he or she likes

¹⁶ Sec. 1721(a)(5)(B)(i)

¹⁷ *James M. Knight v. School Administrative Unit No. 16, et al.*, Rockingham County Superior Court (Nov. 7, 2000).

¹⁸ See "Court tells school: Give dad Internet log," available at http://www.eagletribune.com/news/stories/20001107/FP_008.htm. See also Carl S. Kaplan, "Suit Considers Computer Files," available at <http://search3.nytimes.com/2000/09/29/technology/29CYBERLAW.html>

¹⁹ The term URL stands for Uniform Resource Locator and generally denotes the Internet address of a

to visit. This information may be valuable to commercial interests seeking to profile student Web use and market information to them. Surely the Commission does not want to promulgate rules that have the potential to standardize this form of data mining across our nation's schools and libraries, especially given recent Congressional efforts to protect student privacy.

The CHIP Act's language on the point of Internet use monitoring is contradictory. On one hand, Sec. 1702(b) of the Act outlines a "Disclaimer Regarding Privacy" that states "[n]othing in this title...shall be construed to require the tracking of Internet use by any identifiable minor or adult user." This language is potentially in conflict with Sec. 1721(a)(5)(B)(i) which addresses certification with respect to minors: "[certification under this subparagraph is a certification that the school] is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors..." Given the seemingly confused legislative intent on this issue, the Commission should clarify by allowing schools to supervise their students using the means they see best fit. Schools should not be required to monitor their students. Likewise, the Commission should not set a national standard on supervision of student Internet use, especially where such a standard might endanger the privacy of millions of students. Given the recent enactment of COPPA, Congress is clearly interested in protecting student privacy. The "Disclaimer Regarding Privacy" speaks to this legislative intent. To preserve the privacy of our nation's students, CoSN and ISTE urge the Commission to respect the autonomy of local schools to formulate their own policies regarding the monitoring of online activities.

given page on the Internet. URLs are typically displayed in a web browser's 'location' or 'address' bar.

IX. CONCLUSION

Our nation's poorest schools and libraries and our nation's neediest schoolchildren will feel the impact of the CHIP Act in a greater proportion than more affluent sectors of our society who have no need for federal Internet funding. The burden on such school districts is already great. Cash-strapped and struggling for funding, these school districts do not need a heavier load than they already bear. In devising rules for CHIP Act implementation, the Commission should, to whatever degree possible, allow school districts maximum flexibility and autonomy while still adhering to the letter of the Act. Unfortunately, with different requirements for sometimes overlapping federal funding programs, the letter of the Act is not clear. Therefore, CoSN and ISTE request clarifications on the ambiguous aspects of the statute.

CoSN and ISTE also propose various suggestions that we submit would make sense for the Commission to follow in its rulemaking. First, in order to ensure an easy, non-burdensome certification process, the Commission should allow for simple "checkbox" style certification on an existing FCC form, Form 486. Because compliance could be a time consuming process for large school systems and consortia, fairness demands that these entities be allowed to file separate certification or joint certification, as the recipients see fit. Likewise, schools and libraries should be allowed to amend their certification, using Form 500, so as to prevent the funding of a compliant consortia member from being delayed due to the implementation troubles of another member. By allowing an amendment to the initial certification form, the Commission would succeed in providing flexibility for groups who have uniformly complied and those that need additional time to meet the statutory requirements. In addition, the certification deadline

with which school and libraries must comply should be the later of 120 days after the beginning of the program year or 10 days after the beginning of receipt of service.

CoSN and ISTE also maintain that the preliminary certification process should begin with program Year 5. Critical elements of the E-Rate program look place with regard to Year 4 well before the “120 days following the passage of the Act” as enumerated in the statute. Moreover, the Commission should avoid disruption of the current budgetary plans of schools and libraries.

CoSN and ISTE seek clarification from the Commission regarding issues not specifically addressed in the NPRM. It should be made clear to schools and libraries that if they use E-Rate funding only for telecommunications services, they are not subject to regulation under the CHIP Act. CoSN and ISTE’s constituency also requires guidance about the differing requirements under E-Rate, ESEA and LSTA, and how they should proceed if they receive funding from multiple programs. Given the CHIP Act’s purpose to protect children from harmful online content, the Commission promulgate a rule stating that the CHIP Act does not apply to computers used for internal networking or administrative uses where such computers are not available for use by the general public or students. There is no need to burden both the technological infrastructure and budgetary constraints of schools and libraries with enforced filtering that goes beyond the intent of the law. Finally, because Internet use monitoring can endanger student privacy, the Commission should allow local rules in this area.

In conclusion, the CHIP Act needs much clarification before it can be implemented without putting severe restrictions on the autonomy of schools and libraries. It is clear that in many cases, teachers and administrators are in the best position to

determine effective policies for protecting children. Given this, and the importance of the E-Rate program for thousands of schools and libraries, the Commission should emphasize flexible rules that impose the least burden on, and provide the most discretion for, recipients.