Before the
Federal Communications Commission
Washington DC 20554

In the Matter of:

Schools and Libraries Universal Service Support Mechanism Second Report and Order and Notice of Proposed Rule Making	)	CC Docket No. 02-6

Initial Comments of the State E-Rate Coordinators' Alliance (SECA)

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Summary of Comments

The State E-Rate Coordinators' Alliance (Alliance) is appreciative of the Commission for the opportunity to comment on the April 29, 2003 Second Report and Order and Notice of Proposed Rule Making in CC Docket number 02-6 (Order), and is pleased to submit these Comments. A considerable portion of these Comments are the result of a four-day meeting of more than 30 Alliance members, convened primarily to develop suggestions to streamline the E-Rate program and to provide suggestions to the Commission and Universal Service Administrative Company (Administrator) for waste, fraud, and abuse reduction.

In general, the Alliance is pleased with new regulations issued through the Order. Alliance members are particularly appreciative of the new definition of "Educational Purpose," inclusion of language giving telecommunications and Internet services and delivery to and within schools and libraries a presumption of eligibility, and providing applicants with the option of whether to receive discounted bills or reimbursements.

The Alliance is concerned about current Administrator interpretation of the 30 percent rule and how it is being applied to "unsubstantiated" discount application requests. An appeal has been submitted to the Commission to overturn this arbitrary interpretation.

The Alliance applauds the Commission for giving applicants the choice of payment method and timing. Alliance members are pleased the Commission codified the 60 day appeal window and recognized E-Rate applicants are generally not familiar with Commission practice and procedure, therefore deserving a degree of latitude with respect to dealings with the Commission. The Alliance requests that the Commission go further with this notion and direct the Wireline Competition Bureau to evaluate appeals in much the same manner.

When appeals are successful, the Alliance supports funding such appeals immediately. The Alliance also supports using subsequent years' funding when funding successful appeals in light of new regulations carrying over unused funds.

The Alliance supports debarment of certain service providers and applicants but cautions that debarment should be limited to E-Rate related offences.

The Alliance supports the Commission non-action of the unused funds issue. The Alliance notes a number of reasons for unused funds and believes the Order will address a number of those issues. Overcommitment of funding, streamlined application process, clear eligible service regulations will ultimately reduce unused funds. The Alliance does ask the Commission to engage the services of an actuary for assistance in determining the amount of funds that can be safely overcommitted in a given year.

Further Notice of Proposed Rule Making

The Alliance supports the Commission's proposal for carryover funding regulations.

The Alliance agrees that approval of technology plans should not be required until discounted service actually begins. Technology plans approved for the No Child Left Behind Act also should receive automatic approval for E-Rate.

The Alliance supports the concept of a computerized eligible services list. Such a list will reduce applicant confusion. Alliance members do not find it necessary to limit the list geographically. Alliance members foresee legal issues with a computerized eligible services list but note the issues would be between the Administrator and service providers and could be resolved before the application window, thus reducing funding denials and subsequent legal issues between the Administrator/Commission and applicants.

The Alliance asks the Commission and Administrator to elaborate on the definition of "Technical Support" for internal connections and strictly enforce such definition.

The Commission asks for comment on other measures to prevent waste, fraud, and abuse. The Alliance has included a host of broad and specific suggestions to reduce waste, fraud, and abuse throughout the E-Rate program. Alliance members believe substantive changes must be implemented at the Administrator level to make the program operate more efficiently and reduce waste, fraud, and abuse. Substantial rule and policy changes also must be implemented to stem growing instances of waste and abuse of the program.

The Alliance suggests alteration of the discount matrix to cap discounts for internal connections at 70 percent and the eligible services list for internal connections should be tightened to limit wasteful or abusive applications.

The Alliance suggests revision of the Form 470, elimination of Block three of the Form 471, modification of the Form 471 to eliminate the requirement for submitting the Form 486 for certain applicants, and streamlining of the application process for basic telephone service.

The Alliance asks the Commission to continue expansion of Educational Purposes to recognize the breadth of activities related to education, including the No Child Left Behind Act. Provisions should be made for streamlining the application review process for services that recur year after year. The Alliance proposes shifting Client Service Bureau functions to Program Integrity Assurance. Service substitutions should be permitted under less stringent rules.

The Alliance believes consortium and large applicants have been subjected to undue review delays and ask that resources be made available to focus attention on such large

applications and ensure funding decisions are made prior to the start of service. Revisions and reforms to the way consortium leads collect Letters of Agency also are necessary. New regulations for duplicative services must be carefully implemented.

The Alliance makes several suggestions for improving E-Rate administration. The Administrator should increase full-time staff, particularly in the Program Integrity Assurance area. The Administrator should be directed to implement procedures to eliminate duplicate requests for information of applicants during the application review process. An annual task force composed of representatives of applicant and service provider communities should be convened to address operational issues from the previous year. The Form 471 filing window should be permanently set for mid-February. E-Rate consultants should be required to register with the Administrator. Procedures should be established to address delays in issuing funding commitment letters to certain applicants. The Administrator should establish a full-time ombudsman position.

The Alliance asks the Commission for financial support to states for duties mandated under Commission regulation and Administrator policy.

The Alliance asks that BEAR payments be made directly to applicants. Applicants also should be given the opportunity to review service provider invoices submitted to the Administrator.

The Alliance suggests debarment policies and cautions on when to debar service providers or applicants.

Forward

The Alliance is appreciative of the Commission for issuing the Second Report and Order addressing a number of E-Rate issues of concern to the Alliance. The Alliance also is appreciative of Commissioner Abernathy and her staff for the May 8, 2003 Forum on Streamlining the E-Rate Program.

These comments represent the suggestions and opinions of state E-Rate coordinators from approximately 40 states. Representatives of the Alliance typically perform E-Rate training for applicants and service providers and act as intermediaries between the applicant and service provider communities, the Administrator, and the Commission. Other contributions provided to the E-Rate program by Alliance members include technology plan approval, applicant verification assistance to the Administrator's Program Integrity Assurance division (PIA), verification to the Administrator of applicable state laws confirming eligibility of certain applicant groups, and contact of last resort to applicants by the Administrator. Alliance members are thoroughly familiar with E-Rate regulation and policy.

In late April 2003, thirty-one members of the Alliance met in Washington to formulate recommendations to the Administrator and Commission for improvements with the E-Rate program and policy positions for the May 8 Forum. The majority of those recommendations are incorporated with these Comments.

Alliance members represent the great diversity of this nation, from the bush of Alaska to the concrete canyons of Manhattan. Consequently, individual opinions may vary from the consensus and should be reflected in comments from Alliance members and member states.

A valued member of the Alliance, Bruce (Chip) Daley, passed away on May 14, 2003. Chip attended the April 2003 Alliance meeting, providing insight and opinions incorporated with these Comments. Chip's last contribution to the Alliance was an email expressing frustration that most Alliance members feel about the E-Rate program at some point:

> In my opinion you can dress up the program as much as you want as far as training, etc., and I think hiking up the training would be a great idea, this program needs BASIC SIGNIFICANT policy change in order to work....I'm tired of sending in multiple information proving beyond a reasonable doubt such "significant" data such as when a school closes, whether or not a school is a new school, whether an estimate of costs is within 30 percent of real costs, that haven't even been incurred yet, and then having to go into my supervisor's and try to explain that it is important for them to write a support letter to ensure the survival of the program.
>
> We have an expression for this in Nevada.....I'm beginning to smell the wind from the corral.....
>
> Chip

The Alliance dedicates these Comments to Chip Daley.

Comments on the Second Report and Order

The Second Report and Order represents a breakthrough in the relationship between the E-Rate applicant community, the regulatory charge of the Commission, and the administrative role of the Universal Service Administrative Company (USAC and Administrator). The Alliance applauds the Commission for its recognition that many E-Rate applicants "…have no experience with regulatory filing processes (before the Commission)."[1] The Commission established unique appeal deadline regulations for E-Rate applicants that consider the needs and circumstances of diverse and sometimes isolated schools or libraries at the expense of a formerly rigid regulatory environment. The Alliance urges the Commission to continue on this path with subsequent Orders.

The Alliance thanks the Commission for expanding the definition of "Educational Purposes" and including services such as voice mail as eligible. Particularly, inclusion of language giving services on school property the presumption of eligibility should help reduce applicant confusion on eligibility of Priority One services in particular. This significant clarification will also streamline application review and reduce funding denials.

The Alliance urges caution with implementation of new regulations on Duplicative Services.[2] This issue was not part of the Notice of Proposed Rule Making and Order, CC Docket No. 02-6, Released January 25, 2002, and the Alliance did not recognize this as a potential problem. The Alliance certainly does not condone discount funding of duplicate services to the same population during the same time period; however, when translating this regulation to policy, the Administrator must consider instances such as service overlap in

[1] Second Report and Order, FCC 03-101, CC Docket No. 02-6 Issued April 30, 2003 (Order) at 56.

transition from one service provider to another or implementation of new or unconventional services.

The Alliance welcomes establishment of a Computerized Eligible Services List for internal connections. Telecommunications and Internet access services are much better defined with new Educational Purpose regulations. Internal connection eligibility however remains in a state of confusion. A list of eligible internal connections, conditions for eligibility, and percentage of eligibility will give applicants greater confidence when selecting components or services in the internal connection category of service.

Codifying the "30 Percent Policy" will further reduce confusion in the applicant community; however, the Alliance is concerned that the Administrator has unilaterally and improperly expanded the 30 percent policy to extend beyond "ineligible" service to include "unsubstantiated" service. The Alliance is opposed to including "unsubstantiated" service as a factor in the 30 percent policy. Elaboration of this issue is discussed later in these Comments.

According to the Telecommunications Act of 1996, the E-Rate program should be a discount only program. The Alliance applauds the Commission for establishing regulations giving applicants the choice of receiving discounts or retroactive payments. In rare instances when service providers cannot provide discounted bills or funding commitments are issued well after the funding year begins, the Alliance believes in general, applicants and service providers can reach amicable resolution of billing issues.

When an appeal decision has been rendered, either by the Administrator or the Commission, funding absolutely should not be contingent on availability of funds. The

[2] Order at 22

Alliance is pleased the Commission established regulations directing the Administrator to fund successful appeals.

Service providers and applicants that defraud the E-Rate program should, without question be debarred from participation in the program. The Alliance supports the Commission mandating debarment for those convicted of criminal offences directly associated with the E-Rate program or those held civilly liable for E-Rate related matters.

The Alliance cautions however that the Administrator should carefully translate these regulations into policy, adhering to the limited definition applied by the Commission in the Order. The Alliance notes numerous applications are currently in a state of limbo while the Administrator investigates alleged improprieties with service providers, bidding processes, applicant/service provider relationships, or investigations initiated through the Administrator's fraud hotline. Elaboration of this issue is discussed in detail with these Comments.

The Alliance concurs with the Commission that certain measures already have been established to reduce the annual amount of unused funds. Implementation of these regulations will further reduce the amount of unused funds each year. The Alliance believes that continued prudent vigilance by the Administrator and advice from competent actuarial or accounting firms will further reduce the amount of unused funding each year. Unused funding occurs for a number of reasons: high turnover in personnel at the district level that are responsible for completing the E-rate forms, severe restrictions on mid-year service change or upgrade, time lag between service contract and service start, and no previous mechanism for entities to return unused funds.

The amount of committed but unused funds may increase in the Administrator's Funding Year 2002 report because many applicants missed the new 486 filing deadline, imposed under the Children's Internet Protection Act (CIPA).

In addition to streamlining measures of the Order, the Alliance suggests steps that will reduce unused funds. Examples include: Allow entities to change or upgrade services during the funding year with fewer restrictions, provide outreach to new E-rate coordinators during the entire funding year, and move the CIPA certification to a form that is submitted prior to commitment, such as the Form 471.

Further Notice of Proposed Rule Making

Unused Funds Carryover Rules

The Alliance generally agrees with the Commission on proposed unused fund carryover rules.

Technology Plan Approval

The Commission should keep the current practice of requiring approved technology plans by the July 1 start of the funding year or when discounted services begin, whichever is later. The Alliance strongly disagrees with any efforts to push that date back in the process, including back to the date of the filing of the Form 470. Schools do technology plans for reasons other than E-Rate, including No Child Left Behind, and other State and local technology initiatives, and we know of no other program that requires approval before the funding year.

Finally, The Alliance asks the Commission to direct the Administrator to match technology plan review criteria in accordance with Commission regulations. For example, auditors and reviewers are citing schools for failure to cover all of the E-Rate discounted

services in their technology plans such as local voice services, cell-phones and other non-directly related educational services. The Alliance notes that technology plans are not even required for basic telephone service. Technology plans are strategic school improvement plans that link technology with improved teaching and learning. Applicants should not be required to weave local phone services with that process. In short, the Alliance asks that the Administrator use a reasonable -- and relevant -- review standard when reviewing and auditing technology plans.

Computerized Eligible Services List

The Alliance applauds the Commission on institution of an online Eligible Services List (ESL). The list should go beyond a "safe harbor" for applicants and be as comprehensive as possible. The Commission requests comment on whether publication of an online ESL would raise legal issues. Considering the current state of service and product eligibility determination, the Alliance can foresee legal issues arising from publication of an online ESL. Legal disputes can include service providers aggrieved by unfavorable eligibility determination by the Administrator. The Alliance welcomes this scenario, as eligibility arguments would take place between service providers and the Administrator rather than between applicants and the Administrator through the funding denial appeal process. Applicants would be able to apply for discounted service with much more certainty as to the eligibility (or even proportional eligibility) of a product or service. Generally, the Alliance supports the notion of eligibility resolution prior to applicant service selection and discount application.

The Commission asks how it could create a safe harbor telecommunications provider list. Currently, the Administrator makes available a telecommunications provider list on its

Web site, albeit difficult to find. When seeking telecommunications service providers, applicants can search the Administrator Web site for the names of the potential service providers that have submitted bids to the applicant or are part of a state or local contract. Each service provider evaluated by the Administrator as an eligible telecommunications carrier is identified on the list. If the applicant is seeking telecommunications services and a potential service provider is not listed on the Web site as an eligible telecommunications carrier, the applicant may disqualify that particular vendor. If indeed the vendor is an eligible telecommunications carrier and was improperly identified on the Administrator Web site, the service provider may have a legal issue with the Administrator but not the applicant. It is also not necessary to limit the list to geographic areas, as applicants will only search for vendors that serve their areas or have responded to RFP's.

On the subject of the Eligible Services List, the Alliance urges the Commission to establish regulations or instruct the Administrator to clarify the ESL in the "Technical Support" area of the internal connection category of service. Based on analysis of funding demand for internal connections at the 90 percent level in Funding Year 2002 and 2003 (see Chart 1 below for Funding Year 2003), the Alliance believes substantial waste or abuse of the E-Rate program occurs under the guise of "Technical Support." Examples include excessive charges for installation, "maintenance" of equipment under warranty, or "help desk" operations funded to a level that could not conceivably be limited to technical support for eligible equipment. The Alliance believes some portion of the $2.5 billion Year 2003 funding requests for internal connections at the 90 percent discount level is attributable to such waste or abuse. The ESL, computerized and otherwise should elaborate extensively on what is eligible under Technical Support for internal connections. Further, the Administrator

must scrutinize applications that contain requests for technical support using eligibility regulations and policies to determine funding approval or denial, rather than formulating unrelated procedural reasons for denial of wasteful applications. Finally, the Alliance reiterates its request that the Commission establish some concept of "price reasonableness" for evaluating funding requests as directed by the Telecommunications Act of 1996.

Other Suggestions for Reducing Waste, Fraud, and Abuse

Codification of the 30 Percent Policy

The Alliance agrees that a codification of the "30 Percent Policy", whereby a funding request can be denied when 30 percent or more of a discount request is includes ineligible services, is a positive step to address waste. However, thus far in evaluation of Funding Year 2003 applications, the Alliance vehemently disagrees with current Administrator implementation of the policy, which has expanded to include "unsubstantiated" service requests.

The Administrator's new implementation of the 30 percent policy has seemingly turned into a bludgeon that does much more to assure that legitimate requests are not funded, rather than guaranteeing that ineligible requests are denied.

In response, the Alliance has assisted several schools on appeals where the "30 percent rule" has evolved into complete denials where there were simple mathematical errors or miscalculations of eligible services. Among these include appeals from the Iroquois West and Belleville High School Districts. In the Iroquois West case, even the Administrator agreed that 67% of the denied telecommunications services request was legitimate, and still denied the entire request. The Administrator did nothing to either alert the applicant of the services in question, and allow them a chance to defend their request, or allow them the

opportunity to receive partial funding and appeal the decision for the remainder. In short, Iroquois West is a prime case of good intentions gone horribly wrong in the implementation.

The Alliance contends that this implementation of the rule, in light of the program's application process and window deadlines is wrong. Inherently, the program's application process requires applicants to infer future costs of eligible services based on information that is often 6-9 months from the actual effective date. Errors by applicants in calculating costs, and errors by the Administrator in reviewing these, will inevitably occur. But instead of working with applicants to substantiate and modify requests in the review process, it has turned into to case of "30 percent gotcha", wherein unfair complete denials are occurring. Finally, in contrast, if the applicant underestimates eligible services, the program does not allow applicants to increase the request to cover additional, unexpected costs or charges. Hence, some sense of fairness to the applicant community needs to be exhibited in the process.

The Alliance submits that this implementation of the "30 Percent Policy" - one which punishes miscalculations and legitimate errors in estimating future costs - is contrary to the program's goals and does little to support its efforts to address waste, fraud and abuse. The program has several other internal checks and balances to assure that only legitimate costs are funded, including checks at the 486, BEAR, SPIF and other reviews that substantiate and re-affirm actual expenses. Also, service providers and applicants are fully aware that they are subject to post-BEAR audit reviews to substantiate any dispersed funds.

In its continuing efforts to address waste, fraud, and abuse, the FCC should continue to allow the Administrator some limited latitude to deny entire funding requests where they believe blatant price inflation has occurred. However, to intentionally deny applicants like

Iroquios and others in the "30% unsubstantiated" group their rightful funding - due to simple mistakes for which applicants are quickly willing to correct - is contrary to the goals of the Telecommunications Act. The Administrator's past practice was much more appropriate - reviewers lowered the request to the substantiated amount of eligible services - miscalculations and mathematical errors were adjusted and remedied in the review process.

While the Order specifically denied a suggestion that the Administrator should inform applicants prior to issuance of a funding denial,[3] the Alliance believes this position by the Commission fails to consider the totality of the review process - the notion that applicants and Administrator maintain communication so that applicants are aware of what is incorrect and needs substantiation and/or adjustment, then make the proper adjustment to the funding request. To say that doing this will add administrative costs is puzzling as these reviews happen all the time and adjustments are made as a matter of course.

The Alliance recognizes the need for applicants to be as accurate as possible with discount requests; however, mistakes on both sides occur with a program as complicated and administratively burdensome as the E-Rate. To use this rule as it is currently being implemented and not allow the Administrator leeway in adjusting funding requests is simply not fair to the applicant community.

The maximum discount level for internal connections services funding should be capped at 70%.

The Alliance recognizes the vast majority of program waste and abuse occurs with internal connection funding requests, particularly at the 90 percent discount level. In some cases, internal connection vendors have made a concerted effort to target 90 percent discount

[3] Order at 41

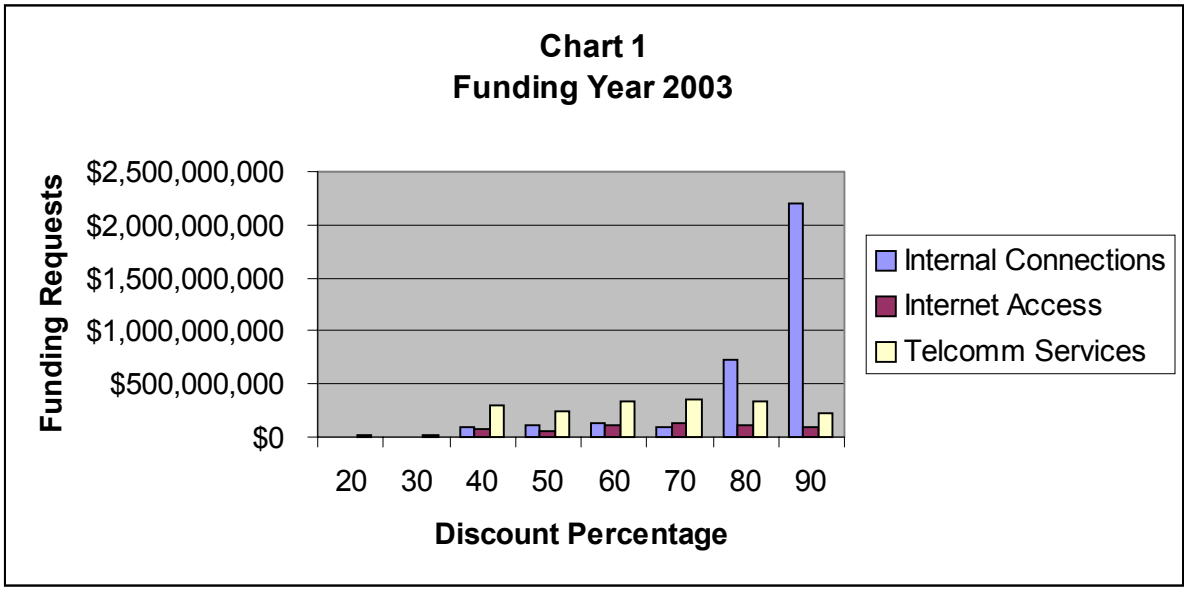
applicants with sometimes extravagant, expensive and often unnecessary internal connection equipment and service. While we concur with the Commission's desire to ensure connectivity in the nation's poorest schools and libraries, we believe a ten percent match does not provide a sufficient incentive for applicants to limit internal connection funding requests. Often such requests include excessive or overly elaborate maintenance agreements or "help desks" which go far beyond basic network maintenance and have the effect of augmenting school employees with service provider employees, paid for with E-Rate funds. Admittedly, such funding requests have been approved in the past, no doubt encouraging more similar requests. Such requests should properly be addressed with revisions to the Eligible Services List and eligibility guidance, addressed in these Comments.

Analysis of funding requests for the first five years of the program strongly indicates that the minimal ten percent match creates an incentive for some applicants to purchase more services than necessary to adequately serve their needs.

The Alliance notes that discount rates for Priority One services should remain unchanged. The primary charge of the E-Rate program under the Telecommunications Act of 1996 is to provide connectivity for schools and libraries. The 90 percent discount for connectivity, particularly for poor and isolated applicants is necessary and should not be changed. The Alliance notes that there appears to be relatively little waste or abuse with Priority One applications at all discount rates (see Charts 1 and 2).

Conversely, the Act states in section 254(h)(2) that the Commission shall enact rules for Advanced Services (internal connections) that are "…technically feasible and economically reasonable…" The law gives the Commission great latitude with this language. Evidence overwhelmingly points to instances of waste and abuse in the internal connection category of

service at the 90 percent level, usually involving large sums of money. For example, Year 2003 initial demand for internal connection funding requests by 90 percent discount applicants totaled almost $2.5 Billion. This demand would require an applicant match of almost $250 million for those internal connection requests. By contrast, total demand for telecommunications and Internet services for 90 percent discount applicants in Year 2003 totaled only $250 million. In other words, the local ten percent match for internal connections funding requests would cover the entire request for Priority One services. Chart 1 illustrates this point:

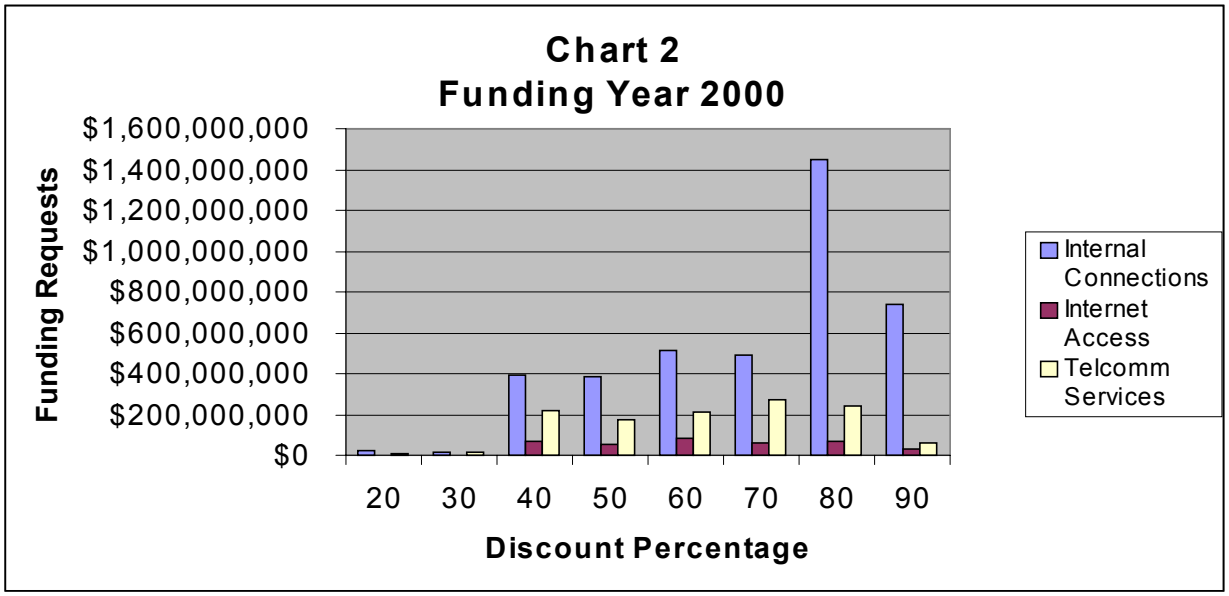


Funding requests for internal connections in discount bands 70 and below reflect a lack of demand by applicants, discouraged by insufficient funding available for lower discount bands in funding years 2001, and 2002. Demand for internal connections in the 80 percent band includes consortia, school district, and library applicants between 80 and 89 percent that reasonably would expect funding based on funding patterns from previous years.

In funding Year 2000, the year after sufficient funding was available for internal connection funding at all discount bands, true applicant demand for internal connections across all discount bands should be reflected. Also, aggressive service provider marketing of internal connections did not appear to be a severe problem in Year 2000.

The Alliance asks the Commission to note the relative similarities between Charts 1 and 2 with respect to telecommunications and Internet access funding requests. Funding demand for telecommunications and Internet access categories of service remained relatively constant from Funding Year 2000 to 2003 and the amount of demand within discount bands for telecommunications and Internet Access remained relatively constant, resulting in roughly the same distribution of funding demand across bands. Finally, funding demand in Chart 2 indicates a similar curve for all services across bands, which appears to reflect true demand for services.

The Alliance believes the difference in demand for internal connections at the 90 percent discount level between Charts 1 and 2 can generally be attributed to service provider driven marketing to applicants, encouraging additional funding requests in funding Years 2002 and 2003, coupled with applicant abdication of procurement responsibilities. Administrator failure to consider "price reasonableness" when considering internal connection requests and overly broad eligibility approval of certain internal connections services also contributed to funding demand increase.



The Alliance therefore proposes a change in the discount matrix for internal connections. Using the current Urban/Rural discount matrixes, reduce the internal connection discounts for applicants in the two highest discount bands to a rate of 70 percent (changes noted in red).

Under the rules of priority, should insufficient funds be available to fund all internal connection funding requests, discounts should be applied first to internal connection requests of applicants in the highest Priority One discount category. Should funds remain after funding all internal connections for applicants with Priority One discounts of 90 percent, internal connections should be funded for Priority One discounts of 89 percent, then 88 and so on until all funding is exhausted.

The Alliance proposes the following Discount Matrix be adopted:

INCOME Measured by % of students eligible for the National School Lunch Program	PRIORITY ONE URBAN LOCATION Discount	PRIORITY ONE RURAL LOCATION Discount	PRIORITY TWO URBAN Discount	PRIORITY TWO RURAL Discount
Less than 1%	20%	25%	20%	25%
1% to 19%	40%	50%	40%	50%
20% to 34%	50%	60%	50%	60%
35% to 49%	60%	70%	60%	70%
50% to 74%	80%	80%	70%	70%
75% to 100%	90%	90%	70%	70%

The Alliance believes that a minimum 30 percent applicant match, verses the current 10 percent match would significantly diminish program waste and abuse. The other intended result would be to provide needed funding to many libraries and schools in the 60 to 80 percent discount categories.

In order to reduce the potential for fraud, waste and abuse, the definition of maintenance services on internal connections should be re-examined in order to pay specific attention to items such as help-desks and on-site maintenance.

Maintenance is listed under both the Internal Connections and Miscellaneous Categories of the Eligible Services List. Services requested under the maintenance, technical support, and professional services categories on the Eligible Services List associated with internal connections have been broadly interpreted by the Administrator to include network management, help-desk, project management, and other expensive services, going well beyond traditional maintenance of equipment. The Alliance believes the Administrator's

overly broad definition and approval of maintenance, technical support and professional services has contributed to the explosion of requests for internal connection funding in program years 5 and 6, graphically illustrated in Chart 1 above.

While protecting the investment in equipment through warranties is essential, the maintenance category has expanded to network management, help desks, and other services. Clearly delineating and limiting the definition of "maintenance" will promote consistency and limit extraneous items from being inserted into this category. The Alliance urges the Commission and Administrator to limit maintenance funding to the very limited provision of previously funded eligible equipment. Maintenance, through quality of service contracts with Telecommunications or Internet Access categories should, however, remain eligible as previously funded.

Form 470 regulations should be modified to reflect six years' experience.

In order to foster competition and ensure that pre-discounted prices were as low as possible, the Commission established a requirement in its the May 8, 1997 Report and Order that mandated applicants competitively bid the services for which they were seeking discounts. This was accomplished by requiring applicants to have a Form 470 posted on the Administrator's Web site for at least 28 days. While the Alliance applauds the Commission's goals of this requirement, the Alliance believes that the posting of services has not produced the intended outcomes. Six years' experience has proven that few entities receive viable bids as a result of their Form 470 postings. In fact, most entities do not receive bids from their incumbent providers, let alone from competitors. What the 470 has produced is a mechanism by which any vendor - from computer salesmen to stadium bleacher vendors - can access the phone, fax and/or e-mail address of more than 36,000 entities eligible for E-Rate discounts.

These solicitations frequently have absolutely nothing to do with the services requested on the 470 and the form's contact person is left spending valuable time trying to get off e-mail lists, fax lists or the phone.

Further, the Administrator cited as primary reasons for funding denials is applicants' inability to comply with requirements associated with Form 470 regulations. Specifically, two percent of applications are denied because of 28 day posting violations and three percent for failure to sign certification pages.

Many applicants view the Form 470 as merely a stumbling block and meaningless administrative burden to achieving discounted services rather than an opportunity for broader access to relevant and competitive services at competitive prices, yet it remains the most common reason for denial. In the Council of Chief State School Officer's initial comments submitted on April 5, 2002, the Alliance called for abolition of the Form 470 calling applicant experience with the form "dismal."[4] The Alliance modifies its position with this filing. The Alliance recognizes that the Commission may not be ready to abandon the concept of applicant advertisement of services via the Form 470 and Internet.

The Alliance therefore proposes that regulations remain in place for Web posting of a Form 470 by applicants seeking discounted services; however, regulations requiring 28 days posting prior to signing contracts should be abolished and signed certification pages should not be required. Finally, applicants should not be denied funding on the basis of failure to check one of the "Categories of Service" boxes. Applicants should be allowed to either indicate they have an RFP, or describe, in general, the type of service desired.

[4] CCSSO Initial Comments First Report and Order and Notice of Proposed Rule Making, submitted April 5, 2002, page 58.

Block 3 information on Form 471 should not be collected because it serves no evident useful purpose.

The intent of Block 3 of Form 471 was to provide the Administrator with a measurable account of the impact a specific application would have on improving the connectivity of schools and libraries. However, because schools and libraries are represented on more than one Form 471, Block 3 has the potential to sometimes double count numbers of students and library patrons served. In addition, it is unclear how this information has ever been used. In order to simplify the application process and reduce the misinformation that may result, the Alliance recommends eliminating Block 3 from the application.

This recommendation was made unanimously by the Administrator's Year 3 E-rate Task Force and still is relevant and recommended at this time.

The Form 471 should be modified to give each applicant the option to provide the name of the organization that approved the technology plan(s); confirm the date on which services are scheduled to commence; and, certify CIPA compliance, thereby making the Form 486 optional for Priority One applicants that are able to provide this information at the time of filing the Form 471.

Numerous applicants, having received funding commitments from the Administrator, are ultimately denied receipt of discounts because of missed filing deadlines for the Form 486. In many cases, such as with basic telephone service or Internet access, applicants are certain of all current Form 486 requirements at the time they file the Form 471.

The Alliance proposes the Form 471 be modified to allow applicants receiving Priority One services the option of certifying all Form 486 requirements when filing the Form 471. Applicants will be required to certify that services shall start between July 1 and July 31 of the relevant funding year, the applicant is CIPA compliant, and a technology plan has been approved. This proposal will eliminate the Form 486 in many cases and encourage applicants to separate Priority One and Priority Two applications, as the Administrator has

suggested for several years. Implementation of this suggestion will also foster the goal of streamlining the application process for basic telephone service.

While the Order codifies a new broader definition of educational purposes, a holistic approach is needed for recognizing the breadth of activities related to education.

The Alliance appreciates the clarification of the statutory term "educational purposes" contained in the Second Report and Order of April 23, 2003. This clarification will not only allow schools and libraries to use E-Rate supported services more broadly within the mission of educating children, it will also simplify the application process for applicants and the review process for the Administrator. As this broad standard is implemented by the Administrator as it makes decisions on eligible services, the Alliance looks forward to a continuing dialog on how the E-Rate program can best be integrated into the national goal of improving education.

Integration with No Child Left Behind

The No Child Left Behind Act of 2001 (NCLB) calls for the enhancement of education through technology and the closing of the digital divide, in part through the effective integration of technology resources and systems with teacher training and curriculum development. It is a far-reaching act, which requires the involvement of technology at many levels, from student training and achievement testing to staff training and the delivery of special services to students who have fallen behind their peers. Districts are encouraged to effectively integrate technology resources and systems with teacher training and curriculum development and establish research-based instructional methods.

The establishment and maintenance of a robust information network with easy access for all students and staff should have support and funding from the E-Rate program. Distance delivery of services becomes more important as the requirements of NCLB stretch the

resources of the local district. Small and rural districts need access to the resources of other districts, state universities and state departments of education in order to upgrade teacher qualifications. Multiple assessments of student achievement require electronic storage of data and the capacity for analysis and reporting. Special services can most efficiently be used by districts that can parley delivery to several students through distance delivery.

The Administrator should closely analyze the provisions of NCLB and make changes in the eligibility list to support the activities that it requires of the educational community.

Additionally, NCLB requires technology planning. The Commission should establish regulations recognizing technology plans approved for NCLB shall also be considered approved for E-Rate. The Alliance notes that as of the date of these Comments, the Administrator Web site still mentions Technology Literacy Challenge as the basis for E-Rate technology plan approval. The Technology Literacy Challenge program no longer exists.

Expanding the school day

Many educational institutions, particularly in light of the requirements of the No Child Left Behind Act, are trying to provide an educational environment where students can continue the learning process after the school doors close and where parents can be involved in the educational activities of their children.

It makes educational sense to provide a seamless educational environment in order for students to leave school at the regular time and go to a library or community center and gain access to the computer files stored on his/her school computer and to the Internet. To date, this idea has been piloted among a few school districts and libraries with great success. These are institutions located in areas where they have sufficient resources to provide such services. However, students who, for example, live in public housing cannot access their work because

schools and libraries currently are not permitted to share access to the E-rate discounted network with community groups and neighborhood centers. With the proper safeguards in place, the Alliance supports the concept of being able to utilize E-rate discounted bandwidth with certain non-eligible entities during off-school hours as long as the bandwidth is used for educational purposes. Those safeguards, however, will be the key to ensuring that demand to the fund is not increased due to this provision, and that the entity does not initially request more than it needs for educational purposes. The Alliance agrees that these safeguards, as the Commission suggested in its order commonly called the Alaska Waiver, should include:

- "That the school or library request only as much discounts for services as are reasonably necessary for educational purposes;
- "The additional use would not impose any additional costs on the schools and libraries program;
- "The services to be used by the community would be sold on the basis of a price that is not usage sensitive; and
- "The use should be limited to times when the school is not using the services."

Further, the Alliance suggests that the entities receiving this currently non-utilized bandwidth be non-profit entities and provide a robust educational program. Of course, any equipment needed to connect these entities to the network would not be E-Rate eligible in any way. The Alliance also believes that if the scope is kept to educational purposes, non-utilized library bandwidth must only be used for K-12 educational purposes. So as to ensure that the fund is not adversely affected, the Alliance suggests a condition that applicants filing

to share non-utilized bandwidth certify that their current request was not increased because of their intention to share their bandwidth.

The Alliance proposes the Commission and Administrator establish an Evergreen FRN regulation and policy and streamlined review of Priority One applications.

Under existing E-rate program rules applicants must submit an application for all services on an annual basis. The vast majority of applications contain funding requests (FRNs) that are essentially the same from year to year. These include services previously approved and funded Priority One services such as recurring telephone, multi-year contracts, or broadband connections. The review of annual recurring Priority One service applications that are exactly or essentially the same from year to year are subject to the same rigor as more complex and applications for new services.

The magnitude of the current workload associated with the review and disposition of applications results in the issuance of Funding Commitment Decision Letters sometimes well after the start of the funding year. This places fiscal burden on applicants to fund services for which E-Rate commitments are not received by the start of the funding year.

Each year approximately 20 percent of E-Rate applications are denied, largely due to procedural errors or miscommunication between applicants and reviewers. Often, multi-year contracts or state master contracts are included in the annual denial quota. The Alliance believes this is an unacceptably high denial rate and foments a perception by applicants that discounts on even the most basic of telecommunications services are not certain.

The Alliance has long held that the Administrator should treat applicants like customers. Part of the problem is a lack of Administrator staff continuity, addressed here and in these Comments. The Alliance stresses that the vast majority of applicants make every attempt to honestly request proper discounts for eligible services year after year. E-Rate

applicants are concerned with the complexity of the application process. Many applications for recurring telecommunications and Internet access are for services approved for discounts in prior years.

The Alliance proposes the adoption of a streamlined process, or “Evergreen FRN” for "no-change" or “little-change” Priority One recurring services for tariffed, month-to-month and contracted telecommunications and Internet services. Adoption of this proposal would streamline the application process for applicants, reduce Administrator workload, and shorten the time required to commit funds. The Alliance contends that this proposal will streamline the review process by increasing the use of automation, thus speeding application review.

The Alliance believes that this universe of applications has a small risk of waste fraud, and abuse as evidenced in Charts 1 and 2 above. Should instances of fraud or abuse come to light after funding approval or even payment, the Administrator has in place the COMAD mechanism for fund recovery, even from previous years.

The Alliance believes the implementation, while non-trivial, can be accomplished with a combination of form revisions, online screen modifications, and changes to Administrator Web reference materials. Approval of recurring Priority One service FRNs can be based on the approval of prior year applications. For example, an applicant can submit an application that indicates the same sets of services that were approved in a prior year. If price, usage, or percent of eligible services change from year to year, the applicant can change a pre-populated Form 471, Block 5 from the previous years’ application, using the FRN from the previous year. In the case of tariffed and month-to-month service, the Administrator can compare the new request with previous requests. If the request is within certain parameters and the applicant has not substantially changed demographically (same

number of schools, students, or buildings), the FRN should be given "fast track" approval. For tariffed and month-to-month service, the online Block 5 should also remind applicants to enter the 470 number for the current year.

Similarly, for identical multi-year contracted services, the applicant would reference the approved FRN from the previous year to access the pre-populated Form 471, Block 5. The discount percentage would change based on Block 4 information. Item 21 attachments should not be necessary for such applications, as they would already be on file with the Administrator, thus reducing paperwork. This proposal would not preclude the Administrator from requesting additional information of the applicant if questions arise, or for random audits.

The process can be highly automated and increase efficiency of the review process for this universe of applications. This proposal can also easily apply to consortia as well as individual applicants. This proposal complies with existing regulations, as tariff and month-to-month applicants would be required to file a Form 470 each year, and multi-year contracts are exempt from competitive bidding for the life of the contract. If an applicant changes service providers, the applicant would submit a new application for E-Rate discounts or SPIN change request.

Eligible Services Team should be directly available to applicants and service providers for thorough pre-application advice and assistance.

It is widely known that determining the E-rate eligibility of a particular service or product is often difficult because there is no single repository for information – either from the Administrator or on their website. In fact, the original Eligible Services List now has been expanded to include numerous conditions of eligibility, Frequently Asked Questions, Fact Sheets, Reference Documents, and a Framework of Eligible Services. Rarely can the Client

Service Bureau (CSB) provide a complete, detailed and accurate description of a product or service eligibility and the larger picture of what is required in order to have this item approved on an application form. Such confusion compels applicants to turn to E-Rate consultants and service providers for guidance on what is or is not eligible.

The Alliance believes, based on experience, the CSB, operated by a contractor to the Administrator, is not staffed by extremely knowledgeable individuals, and therefore often cannot provide intensive counsel. Even the Technical CSB is not readily accessible to applicants and in recent years has been filtered by the CSB with little or no direct contact permitted with the TCSB. Further, the only responses given are to direct questions with absolutely no thoughtful discussion of all issues surrounding the eligibility of certain services and documentation that will need to be submitted with Form 471 for PIA review.

In addition, the services are not scrutinized by the Administrator until after the 471 is submitted, too late for applicants to amend their application or contracts if it's determined that they have applied for ineligible services. This puts applications immediately in jeopardy, and creates more work for the PIA review staff, more funding denials, and more appeals.

The other important, and related problem is the fact that the PIA reviewers are seasonal employees. Just when the PIA reviewers are beginning to thoroughly understand the program, they are terminated, creating a vacuum of institutional knowledge. This situation is detrimental for applicants and the applications under review.

The Alliance proposes the Administrator create an Eligible Services Team of PIA staff that is directly accessible to applicants. Their responses would not be a simple, "yes, the Eligible Services List says this as conditionally eligible," but rather would ask intelligent

questions about what the applicant is trying to achieve and would provide the larger picture in terms of not only what would be eligible or not, but how the applicant may want to consider adjusting their proposal to make it eligible. The Team further would counsel the applicant on what should be included as Item 21 attachments in order to have a comprehensive application. When the application is submitted to PIA, it would be complete and provide all of the information necessary for PIA to make an informed decision.

The Alliance proposes the Eligible Services Team be comprised of the PIA staff, who are normally terminated each year after applications are reviewed. This would solve two problems – it would curb the revolving door of PIA staff, and inherently would make these PIA reviewers better equipped to review applications after the 471 window closes. The likely season for the Eligible Services Team Hotline to be used is between August and the close of the 471 window – the exact months that the Administrator usually hires a new contingent of PIA reviewers. This suggestion would provide much needed continuity of reviewers from year to year.

The benefits of this pro-active Team and Hotline will be immeasurable in terms of customer good-will, less reliance on service providers and consultants, better trained – year round PIA staff and improved 471 attachments. It also will finally deal with the well-known fact that the CSB often provides less than accurate answers when advising applicants and service providers on eligible services and filing procedure. The Alliance notes that numerous appeals before the Commission contend applicants relied on inaccurate advice from the CSB and were ultimately denied funding. The Commission has rejected such appeals holding applicants to adherence to written regulations or policies. Full-time PIA staff responding to applicant questions would no doubt provide more accurate responses.

Pre-Commitment SPIN changes should be permitted.

To comply with E-Rate procurement regulations, applicants are required to enter into "legally binding agreements" with vendors at least five months prior to the funding year. Many applicants, particularly large applicants and large funding requests must pass several layers of application review by the Administrator. These reviews can extend well into the funding year, effectively denying applicants the opportunity to change service providers long after service was supposed to have begun.

The Alliance supports a policy allowing SPIN changes prior to issuance of a FCDL if the application in question has been successfully data entered, has been subject to PIA review, and more than 60 days has passed with no additional communication from the Administrator regarding the application in question. The Alliance recognizes additional restrictions apply to SPIN change requests and address those issues below.

Permit changes or upgrades to service in mid-year

The Alliance strongly encourages the Commission to broaden the current service change policies. Currently, applicants may only change services in the most very narrow of circumstances, and are prohibited from upgrading such services in mid-funding year. Because of the current policy, applicants' hands are tied from implementing technologies they may need and subsequently, additional funding goes unspent for that funding year.

Given the significant delay between the filing of the Form 471 and the receipt of services, the prices of services and equipment may have changed, and/or newer products with similar or better functionalities may be available. In addition, additional funding may have become available through other sources, enabling the purchase of greater bandwidth or services.

The Alliance believes the Commission should permit applicants to upgrade their services or equipment in mid-funding year as long as their funding commitment cap was not exceeded. Applicants should not be penalized for investing in greater bandwidth, for example, simply because they need to wait until the following funding year. A written notice to the Administrator describing the change or substitution should be permitted. So long as the upgrade or change was permitted under local or state procurement rules, the change would be permitted. Again, this scenario is very similar to the budget/contract revisions that are permitted under many states' grant program guidelines, where an applicant simply sends a request to the state, and upon approval, a written approval is sent to the grant awardee and kept with the official state file for audit purposes.

This liberalization of the service substitution/upgrade policy will easily coordinate with the proposed revised vendor selection process.

Just as the SPIN change policy restricted applicants during the first three years of the program, the current service substitution policy is having the same effect. The Alliance encourages the Commission to understand applicants' need to change or upgrade services in mid-funding year, beyond equipment substitutions and grant relief as soon as possible.

Consortium Issues

Streamline and expedite the application process with focused resources.

The Alliance is concerned that the Administrator does not process in a timely manner many large-dollar statewide consortia applications for Internet access and telecommunications funding. The fiscal stress and cash flow problems of many consortia and large applicants, caused by application review delays have reached an unacceptable level.

The Alliance requests that the Administrator establish a unit staffed by experienced reviewers dedicated to processing large-dollar and/or complex consortia applications.

Furthermore, the Commission should direct the Administrator to assess the criteria for inclusion of applications into this group. While no proscription of a particular solution is offered, the Commission should consider other suggestions in this filing such as increasing the number of full-time review employees as one aspect of a plan. This proposal should in no way be construed to discourage timely review of smaller applications. In our view, a solution that harms the many small applicants would not be acceptable.

The value of consortia to the E-Rate program cannot be overstated. Large consortia, and state networks in particular, aggregate demand and reduce the total cost of telecommunications services for their members, and by extension, the program. Consortia also reduce the number of applications that the Administrator must process. Most state networks operate under intense scrutiny by state agencies and state legislators, thereby reducing the risk of fraud, waste, and abuse. Lastly the FCC May 8, 1997 Report and Order establishing the E-Rate program sought to encourage collaboration and consortia creation for the reasons noted above.

Parity of discount methodologies with other applicants.

Currently, consortia applicants are denied the opportunity to use a weighted average to calculate overall discounts. The Alliance believes it is unfair, discourages formation of consortia, and forces an undue burden on applicants. In contrast, school districts can calculate the shared discount level using a weighted average of their member schools. The simple average process is unfair for consortia in that a small district of 150 students is weighted the same as a district of 400,000 children, while the consortia resources needed to

serve both entities are clearly different. The latter process of individually listing entities forces consortia to list every school individually, creating huge applications. Allowing weighted average options of districts allows consortia to simplify the application process and puts them on par with other applicant classes.

This loophole has also opened the door for potential abuse of the program. For example, a low discount large school district could create a "consortium" with a single 90 percent discount school, effectively increasing the discount rate for the school district under current regulation. Additional regulations mandate that the 90 percent school should get its proportional discount. In this example, the large school district would gladly give service to the 90 percent school, as the higher discount for the numerous schools in the district would more than offset free services to the 90 percent school.

Revisions and Reforms of the Letters of Agency (LOAs) forms.

The Alliance believes that a requirement for LOAs from consortia members is important to let consortia members know that the consortia lead is applying for E-Rate services on their behalf. As such, all participants must understand that they may be part of any E-Rate audit process for consortia applications. However, failure to submit an LOA by any single entity or entity members should not jeopardize funding for the entire application.

The LOA or merged LOA/Form 479 (Children's Internet Protection Act compliance form) should remain in force for however long the member is part of the consortia. There should not be an annual update requirement unless there is a significant, substantive change in the relationship between the consortia and the eligible entity. The administrative burden

of requiring a repetitive filing every year places a heavy burden on consortia, eligible entities and the Administrator, and does not accomplish any substantive goal.

Another important issue is the question of which participant level can validly sign an LOA. The primary example is K-12 public schools. In the case of public schools, the LOA should be valid at minimum, at the District level, especially since the District already serves as the legal, administrative and fiduciary representative for all of its schools. If, as in the case of many non-public schools and local libraries, the entity is a member on its own, then, clearly, an LOA at the individual school or library level would be appropriate.

Finally, the Alliance proposes that the LOA should be allowed to be filed and stored electronically by the consortium lead, so long as any state or local laws do not prevent such an arrangement. The FCC should not place any additional burdens on the format in which the filing occurs.

Duplicative services rulings must be carefully implemented.

In the Order, the Commission adopted measures to improve program oversight and prevent waste, fraud and abuse. Among the measures adopted, the Commission clarified that requests for duplicative services – services that deliver the same functionality to the same people during the same period of time – will not be funded. The Alliance agrees that taking actions like these are necessary to avoid waste in the program.

Nevertheless, the Commission and Administrator must recognize the level of analysis necessary to accurately avoid denials that would negatively affect large consortia applications. For example, consortia provide telecommunications (e.g. T-1's) and Internet access services to member entities across their states. On their own, these consortia members

also obtain discounts on telecommunications services (i.e. local and long-distance services) and other Internet access services (i.e leased WAN/LAN services, e-mail) that could be construed as duplicative, when in fact, they are not.

The FCC and the Administrator should implement the following to avoid inappropriate denials to consortia and their members: A thorough process to identify duplicative service funding requests that get at core services and functions beyond a service category level; a pre-FDCL process that consults both affected parties to resolve any potential situations; and when the consortia has a valid LOA from the entity, the consortia is the prevailing application that receives the funding request.

Administrative Issues

Increase Administrator full-time personnel positions.

PIA needs to increase the number of full-time, year-round qualified employees to meet program needs. By meeting this requirement several problem areas can be solved: By providing reviewers with fulltime employment the turnover of employees would be greatly diminished, enhancing the knowledge base of PIA generally. Temporary staff creates a constant cycle of training/retraining on a yearly basis. This practice encourages a yearly cost to the program. Unproductive employee down time can be eliminated or greatly diminished by having full-time employees.

As a result of full time employment and enhanced program knowledge, the reviewers improve their ability to communicate with the applicants. This increased communications skills allow the reviewer to make clear concise requests of the applicant, eliminating the frustration on the applicants' part and increases the chances of having all of the information requested returned within the first seven-day request.

- Processing of applications would be completed in a timely manner due to a working knowledge of the program and the knowledge of applicant's needs;
- PIA reviewers would become more accountable to the customer based upon an ongoing familiarity of the customer's application;
- PIA reviewers who have been with the program and gained experience over a period of time would have better quality control and consistency of evaluations of applications base upon experience gained;
- PIA reviewers on the same team should handle the applications from start to finish;
- PIA reviewers would be able to move from review to pre-application support, eliminating simple errors made by applicants; and generally improving the quality of applications that are received; and
- PIA reviewers would be better equipped to identify fraudulent or wasteful applications.

- PIA reviewers with an increased knowledge and longevity with the program can make better decisions related to simple errors versus complex errors on 471 applications.

Eliminate duplicate requests for information of applicants.

The selective review process should be administered by qualified individuals and be performed in a set amount of time. This would eliminate applicant frustration and subsequent funding issues resulting from lengthy delays in issuing funding commitment letters.

Multiple PIA employees reviewing the same application should have a mechanism for internal communication to eliminate duplicate documentation requests of applicants on the same application. Additionally, reviewers should be made aware of previous reviews on multiyear contracts. These suggestions will help eliminate the problem of inconsistencies among the various levels of review at PIA. It will also help ensure that appeal decisions and FCC policy decisions that affect numerous applicants will be implemented in a timely and fair fashion.

Annually convene a task force composed of representatives of the applicant and service provider communities to discuss and address operational issues and improvements.

The Administrator has had prior success with Task Forces, which were convened to address specific issues. One was the Year 3 Task Force, which worked on a number of suggestions that were implemented and resulted in improved efficiency of the application process, greater understanding between applicants and service providers, and more workable forms and information gathering processes. The Alliance would like to see this type of Task Force revived, on an annual basis. Both the applicant and service provider communities should be represented, to further enhance their understanding of the others' requirements and needs, and to ensure that there is a "cradle to grave" perspective given to the discussion. The Administrator needs to consider not only program improvements, but the long reaching effects such may have and the consistency they may have with other policies and procedures.

Consultants should be required to register with the Administrator

Consultants operate at the fringes of the E-rate program. It is difficult for applicants to determine whether a consultant is legitimately operating separately from a service provider and it is impossible for the Administrator to determine who is operating as a consultant.

The Alliance proposes creation of a mandatory registration system for consultants that utilizes a SPIN-type number that does NOT begin 143; for example, SPINs in the series 547 would adequately identify consultants. Consultants would have to file either the current Form 498 or a similar document, giving their contact information. This would help the Administrator determine whether there is a prohibited connection to a current service provider, and would allow the Administrator to add this information to the BEAR/SPIN search function, making it possible for applicants to identify who is participating in the program "officially" as a consultant. Having a registration mechanism for consultants would allow them to be identified, which would make it easier for the FCC/Administrator to seek enforcement against program rule violators.

Additionally, this would allow PIA, when reviewing applications, to determine whether the consultant is still involved with the applicant or whether there are concerns or issues that require further investigation or information.

Because some "consultants" have been implicated in apparent schemes to abuse or defraud the program, the Alliance further proposes consultants disclose affiliation with service providers on the registration form. Further, should the consultant become affiliated with a service provider subsequent to the consultant's annual filing, the consultant should be required to inform the Administrator of such affiliation during the year. Finally, failure to register or update information, under certain circumstances, should constitute a willful violation of program rules and be cause for debarment.

Establish procedures to address delays in issuing funding commitment decisions letter and other documents.

Despite diligent efforts by the Administrator to set facilitate, and meet completion targets for, the processing of applications, appeals, and invoices, a disconcerting number of

these requests remain unresolved for extended and, at least from the applicants' perspectives, indeterminate periods. When such "black hole" situations arise, applicants need a mechanism or process for resolving these problems or, at the very least, determining their status.

An independent ombudsman should be established to facilitate issues resolution.

The Administrator, with operational units scattered across the country, each with unique administrative structure, often has systems or functionality issues that adversely affect efficient operation of the program.

The Administrator has operational units located in Lawrence, Kansas; Whippany, New Jersey; and Washington DC. These units perform distinctly different functions in support of the E-Rate program. On occasion, problems arise in the units affecting applicants. An independent individual, well versed in program rules and department functions is necessary to analyze the units and identify systemic issues and inefficiencies. The Ombudsman will report findings and recommendations to Administrator leadership and the USAC Board of Directors.

The Ombudsman would be available to applicants through regularly scheduled conference calls and address concerns or issues raised on the calls. The Ombudsman could immediately investigate specific concerns or issues with the appropriate department and quickly resolve issues. An Ombudsman function would aid in streamlining all aspects of the program.

Establish a set date for Form 471 window closing of Thursday before President's Day

Each year the USAC Board Committee establishes dates for the Form 471 filing window. The typical window closing dates of mid January do not conform to applicant school year

and legislative funding cycle. They not allow for some categories of applicants to use the current year's data for Free & Reduced Lunch, thus causing the overall State data to be inconsistent among its eligible entities. While the Alliance is aware of the need to carefully consider the length of time necessary to reasonably review applications prior to July 1, the Alliance believes adoption of many streamlining suggestions contained in this filing will allow flexibility in moving the window closing date into February.

The Commission should permanently change the deadline for the submission of the Form 471 Application to the Thursday before President's Day, 11:59 p.m. Eastern Standard Time. This change will increase the likelihood that school districts, libraries and consortia will have a better idea of their budgets for the upcoming school year, thus decreasing the likelihood of unrealistic requests for funding. It also will allow for all entities to have access to the most up-to-date Free & Reduced Lunch data to arrive at consistent discount percentages within the states.

Support for administrative assistance provided by state agencies

Many state agencies offer significant support for applicants throughout the E-rate application process. In an informal survey of states, an average of about $330,000 annually is spent by state agencies supporting its state applicants. Among the services state agencies provide are the following: review and approval of technology plans; standardized format for reported National School Lunch Program percentages by school; ongoing guidance for applicants through the application process; alerting the Administrator to problems experienced in the field with interpretations and on-line functionality; and assistance with appeals.

These services vary by state. However, additional thought should be given to recognizing the contributions of these organizations. To that end, the Alliance encourages discussion among the Commission, applicants and state agencies to consider whether and how such recognition should take place.

At a minimum, compensation should include the following: paying for travel and lodging expenses to the annual Train-the-Trainers meeting; costs related to reviewing and approving technology plans; subsidize states for local and regional training; and provide a stipend to each state for specific services provided within the state.

Payment and Invoice Recommendations

BEAR payments should be made directly to applicants without first going to the service provider.

Occasionally, E-Rate payments initiated through the Form 472 (BEAR) process are fraudulently kept by service providers and not turned over to applicants, as required by program regulation.

The Alliance proposes that BEAR payments should be made directly to applicants rather than through the service provider intermediary. The BEAR form was developed as a means of addressing situations where E-Rate applicants had already fully paid for the services that were approved for discounts. The form was devised as a means of accommodating both service providers and applicants in order for the applicants to recoup the discounts from the program. The service provider merely acts as the conduit for receiving the payment intended to reach the E-rate applicant, and then forwarding it on. Therefore, is particularly egregious when service providers fail to comply with the BEAR form rules that compel them to remit

the payments that they receive from the Administrator as the conduit for forwarding the payment to the E-Rate applicant.

Alliance members are very familiar with the problems associated with applicants not receiving BEAR payments. In many cases, the school districts in these situations are small districts that are struggling to expand needed telecommunications and advanced services by using the E-Rate program.

In addition, in rare instances, applicants have been completely unable to obtain the discount reimbursement from the service provider because providers have gone bankrupt between the time they received the Administrator's check and when the check should have been sent to the applicant. Although there are cases across the nation, one of the first was in Pennsylvania, where the Lebanon School District, an 80% discount applicant with about 4200 students, lost more than $130,000, or over 50% of the $216,000 of discounts committed. There, the school district submitted three separate invoices to the Administrator through the BEAR process for A/K Computers. By the time that two of the three BEAR reimbursement checks had been mailed to the service provider, the company had filed for bankruptcy.

Repeated calls from Administrator attorneys and the school district's attorneys to resolve this issue were unsuccessful. On a positive note, the Good Samaritan Process appears to have been successful in getting the third reimbursement check ultimately processed through a different service provider, who reimbursed the school district, but only after months of delay. The Alliance is grateful that this process was implemented and hope it will serve as a beneficial tool for other applicants in this unfortunate situation. But at the same

time, this process would have been completely unnecessary had the BEAR check been sent directly to the intended recipient, the E-Rate applicant.

Had the BEAR reimbursement process allowed funding to be provided directly to the applicant, the Lebanon School District and other similarly situated E-Rate applicants would not have to rely on service providers to remit the BEAR reimbursement checks that they receive from the Administrator to the E-Rate applicants. Instead, after extraordinary administrative effort on behalf of the applicant by both its staff and that of the Administrator, Lebanon will be receiving a small portion of that amount, nearly four years after the services were rendered.

The most efficient way to accommodate the BEAR process is by implementing direct assignment to the applicant. This would reduce the time within which an applicant receives payment and the administrative burden on the service provider and the Administrator. It would reduce the administrative burden on the service provider by eliminating the need for the service provider to both deposit one check and send another check to the applicant. It would reduce the administrative burden on the Administrator by eliminating the need for the Administrator to shepherd the check delivery process on behalf of applicants.

There is simply no valid legal or policy reason to justify the current practice of prohibiting applicants from directly receiving BEAR checks.

The development of the BEAR form was undertaken by the Administrator, with oversight and approval of the FCC and Office of Management and Budget ("OMB"). The BEAR form was originally developed to address those situations that arose frequently and regularly during the first funding year, and fell into three general categories. First, because of the pre-existing contract rule, which exempted contracts that were executed on or before July

1, 1997 from the competitive bidding process, some applicants already had been obliged to pay for telecommunications, Internet access and internal connections. Those applicants fully paid for those services using their funds. Second, and similarly, other applicants received funding commitment decisions letters well after the start of the first program year, and decided to commence the receipt of and concomitant payment for services under contracts in anticipation of receiving a favorable decision letter. Third, the majority of service providers had not been able to establish the billing systems necessary to apply discounts on applicant bills during the first funding year, and therefore, relied on the BEAR form as a means of providing discounts to their E-Rate customers.

Importantly, few if any of these situations were contemplated by the FCC in issuing its May 8, 1997 Report and Order where it initially directed that service providers would provide discounts to applicants and seek reimbursement from the fund. The only mention of service provider reimbursement to applicants for services paid in full related to advance payment for multi-year contracts. The Commission clarified that only the current year's payments are eligible for discounts under E-Rate. Nonetheless, applicants may "use their own funds to pay full price for the portion of the contract exceeding one year (pro rata), and may request that the service provider seek universal service support for the pro rata annual share of the pre-payment. The eligible school or library may also request that the service provider rebate the payments from the support mechanism that it receives in subsequent years to the school or library, to the extent that the school or library secures approval of discounts in subsequent years from the administrator."

Applicants should be given the option of reviewing and approving invoices by establishing a checkoff box on Form 486 or Form 471 for applicant review of SPIs.

Occasionally, service providers will bill the Administrator for most or all of committed funding before actually completing contracted work. There is currently no mechanism allowing applicants to restrict or limit payments to service providers.

The purpose of the Form 486, beyond CIPA compliance is to indicate to the Administrator that services have begun and the Administrator may pay invoices from service providers or BEAR reimbursements to applicants through service providers. Once a Form 486 has been submitted to the Administrator, there is no restriction on the amount of payment the service provider can receive by submitting a Service Provider Invoice Form (SPI or Form 474), up to the full funding commitment amount.

The Commission should give applicants the option of requiring service providers to obtain authorization from the applicant prior to submission of the Form 474. This can be accomplished with an additional check-off box on the Form 486 indicating the applicant requires review and signoff of the Form 474 before submission to the Administrator. The format of the signoff could be similar to the applicant signoff now in place for the Form 472 (BEAR).

Adoption of this suggestion will further reduce fraud in the program without imposing additional requirements of applicants that do not wish to review service provider invoices.

Enforcement

Service providers, applicants and consultants should be debarred for willful or repeated violations of program rules.

The Alliance applauds the initial steps the Commission took in this effort with the Order. However, there remains insufficient enforcement authority by the Commission or

Administrator to ensure that there are severe consequences for program violations that are willful and or repeated.

With the surfacing of waste, fraud, and abuse issues, it becomes increasingly important to enforce penalties for those who choose to violate program rules. Based on funding requests in Year 2003 (chart 1), it is apparent that personal integrity is not sufficient to always guide people to do the right thing. The Alliance concludes that there must be consequences for willfully and repeatedly breaking regulations. Service providers, applicants or consultants should be debarred for willful or repeated violations of program rules. New regulations should however go beyond debarment from the program for violations that are criminal in nature. This debarment for willful or repeated program violations should be applied against service providers, applicants, or consultants.

There must be consideration given for novice applicants and new applicant staff because the E-rate process is complex. Novice applicants may make inadvertent mistakes and may even make repeated mistakes. These applicants should not be considered "willful" program violators. And should not be debarred. Similarly, schools experience turnover in their administration. School board members and administrators come and go, so there must be consideration for an applicant school that has been debarred and there is an administrative change to remedy the willful misconduct. Our students must not be penalized for the misconduct of adults.

A program violation that may result in debarment from the E-rate program must be a rule-based condition. The definition of "willful must be defined in rule, otherwise the debarment process could become mired in appeals. Willful and repeated violations must be documented as part of the Whistleblower Hotline - Code 9 process, audit, or investigation.

Debarring an applicant, service provider, or consultant prior to the denial of an E-rate application could put the innocent applicant at risk of being denied E-rate discounts for a year.

If the applicant is not involved in the violation, there should be an opportunity to select a new vendor. If the Administrator determines that willful or repeated violations have occurred, either during application review or subsequently, it should refer the matter to the Commission for investigation that may culminate in a notice of proposed debarment . Applicants, service providers and consultants should be advised and sign a certification that they are aware of the rules and conditions of program violations and possible debarment (e.g., Form 471, Form 498, Form 473, etc.). Notice of proposed debarment should include: (a) giving the reasons for the propose disbarment; (b) explaining the debarment procedures; and (c) describing the potential effect. The person would be given 30 days to respond.

Applicants whose service providers have been debarred should be permitted to change service providers, if they are not implicated in the program rules violation. This service provider change should be processed as early as possible to prevent E-rate funds from going to the offending service provider.

While most E-Rate applicants' actions are based on serving the needs of students, or patrons, there are those that choose to willfully break program rules. Applicants who willfully break the rules should also face the potential of debarment. It may be difficult to prove that an applicant willfully breaks the rules in connection with a service provider. If an applicant is clearly and willfully violates program rules or civil laws, action must be taken. The difficulty will be to prove "willful" versus "ignorance." Some applicants are too busy to study the E-rate rules and some are persuaded by skilled sales professionals to submit E-rate

applications that are in violation of the rules. Applicants must not be automatically determined to be complicit if the service provider has willfully violated program rules.

Conclusion

The Alliance reiterates its appreciation to the Commission for its bold, positive steps with the Second Order Report and Order. The Alliance is also grateful to Commissioner Abernathy for the May 8 Forum and opportunity for Alliance members to testify before the Commission.

Alliance members are available to support the Commission and provide assistance as new regulations are considered to further improve the E-Rate program.

Respectfully submitted this 18th day of July, 2003,

On behalf of
The State Coordinators' E-Rate Alliance

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