

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

In the Matter of:

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

Reply Comments of the State E-rate Coordinators Alliance (SECA)

The State E-rate Coordinators Alliance (SECA) submits these reply comments for the Second Report and Order and Further Notice of Proposed Rulemaking (FCC 03-131). In this Further Notice, the Federal Communications Commission (FCC) seeks to review certain rules governing the schools and libraries universal service support mechanism. We thank the FCC for its efforts and offer our continuing support to help streamline the program and mitigate program waste, fraud, and abuse.

In SECA’s examination of the initial comments, we are pleased to find agreement on several of the positions we submitted in our original comments. We also found a clear message from the E-rate applicant community that urges the FCC and the Schools and Libraries Division (SLD) to be timely and thoughtful in the implementation of new rules and eligible services. Many applicants begin submitting Form 470’s in August and early September, particularly those applicants that have long competitive bidding processes such as regional and state master contracts. Indeed, many of these applicants already have posted their Form 470s for Year 2004. Because the measures proposed support address waste, fraud and abuse, and require Commission action, we urge the Commission to act expeditiously in their rulemakings both to ensure that waste, fraud and abuse is addressed and to provide an equal playing field to applicants that have already begun or will soon begin their application and competitive bidding process.

The Second Report and Order offers an interesting paradox; “to simplify and streamline the operation of our universal service mechanism for schools and libraries, while

improving our oversight over the support mechanism.” Simplifying and streamlining while adding controls seem to be opposing goals, but both concepts can be achieved. At the center of the E-rate challenge is serving applicants. As new rules are implemented, the FCC and SLD must continually work to simplify the program and to address the needs of applicants. The program must not become more complex and burdensome for applicants, instead it should become more customer (applicant) oriented. We know this endeavor will not be easy, but it is necessary and we stand ready to assist in any way possible to make it happen.

Specific Issues:

Reconsideration and Clarification of Eligible Services

As also noted by commenters, Nextel Communications, Inc., and the Illinois State Board of Education (ISBE), we ask that the Commission and the SLD reconsider and clarify the implementation of “educational purpose” well in advance of the application window. Applicants need to have definite guidelines for eligible services for wireless and traditional wired services in advance of the application window.

We agree with the comments of others, including the ISBE and Nextel, to allow as eligible under this reconsideration, *safety-related* telecommunications services used by school personnel on, and proximate to, the school campus. This would include 911 and E-911 circuits leased from telecommunications carriers, wireless services used by non-teaching school personnel such as bus drivers, and security personnel and teaching personnel on field trips. In addition, we ask the Commission for clear guidance on whether employees contracted by the District are also eligible for such wireless services. For example, many bus drivers are not actual employees of the District, but rather are contracted through a central bus company.

We also agree with comments that the Commission allows the expansion of services to support remote services to physically and developmentally challenged students and professional staff development. These services, along with voice-mail, homework hotlines, and the traditional voice services, are critical to the educational purpose of the

school and should be part of any definition of educational purpose as envisioned by the FCC in the Second Report and Order.

We again note that the timing of these decisions is as critical as the decisions themselves. Comments from Funds for Learning express a critical concern along these lines. In their comments, they state that the SLD's new rules need to be developed and announced to the applicant community prior to the opening of the Year 2004 Form 471 window. SECA supports this view because applicants must have clear and specific guidance for procurement of eligible services and development of their E-rate application strategies.

Reducing Waste, Fraud and Abuse

SECA's review of the initial comments finds support for proposals to reduce program waste, fraud, and abuse. For example, New York City Department of Education, (NYCDOE), StateNets, and the American Library Association (ALA) agree that eligible maintenance services should be more clearly and specifically defined. NYCDOE and E-Rate Central propose to establish a funding category for equipment maintenance. While SECA's initial comments do not propose a new funding category, there is a consistency of thought in the initial comments that maintenance is important to sustaining technology in schools and libraries and a growing and significant source of program waste. SECA reiterates that it is important to protect investments in equipment with appropriate eligible maintenance services for Priority Two equipment. Eligible equipment maintenance should be re-defined in the Eligible Services List to permit "economically reasonable" services while excluding excessively costly and elaborate help desk services.

"Evergreen FRN"

SECA finds support for the "Evergreen FRN" in the StateNets, Alaska State Library/Alaska Department of Education, and the ALA comments. SECA proposes a modification to the SLD process to allow approval of FRNs based on the approval of the same services in prior year applications. This streamlining of SLD processes can reduce SLD workload and those efficiencies can be redirected to the review of more complex

application reviews which will help identify and mitigate waste, fraud and abuse issues. This proposal is an opportunity to make the SLD more efficient and effective by increasing the use of automation and reducing the approval time. Included in this category, are applications from individual and consortia applicants for recurring services for tariffed and month-to-month services. We believe this position benefits both the SLD process and applicants and addresses the contemporary concerns of process improvement and waste, fraud and abuse.

Policies and Rules for Transfer of Discounted Equipment

While SECA's initial comments did not address the issue of transferring equipment purchases from high discount schools to lower discount schools, the Florida Public Service Commission, Funds for Learning, and Dell commented on this issue. It is clearly not the intent of the program to allow low-income, high-discount applicants to serve as a conduit for Priority Two equipment. SECA supports the concept of developing a mechanism that requires applicants to keep funded Priority Two equipment at the initial location for a defined period of time. To date, this issue is not specifically addressed in policy or procedure. The FCC and SLD should establish more comprehensive rules governing how and when E-rate subsidized equipment can be transferred, donated, or salvaged. We note that this issue is becoming even more important as schools across the nation are closing due to declining enrollments and/or state and local budget cuts.

Codification of the 30 Percent Rule

In their initial comments, the ISBE and the Association for Telecommunications and Technology Professionals Serving State Government (NASTD) are in agreement regarding the codification of the 30 percent rule. They state that the current interpretation of the 30 percent rule is being applied more restrictively than in the past. In line with the ISBE and NASTD's comments, SECA repeats its concern for the reasonableness of the current implementation of the 30 percent rule.

In the past, the SLD would work to reconcile an apparent inconsistency, fix math errors, and reduce the FRN if necessary. The SLD is now using the 30 percent rule to deny the

entire FRN where the available documentation supports 70 percent or less of the original request. This may have the unintended consequences of denying eligible services for which there is supporting documentation and discouraging eligible applicants from submitting legitimate requests.

If this implementation issue is not resolved and examined in concert with the proposed expansion of educational purpose, applicants will face serious problems and lead to a slew of funding denials. So while we applaud the decision to expand eligible services, we also ask that the FCC and SLD take serious, expedited, steps in interpreting and implementing the 30 percent rule so applicants can file appropriately. SECA and its members stand willing to provide examples or clarifications to the FCC.

Technology Plans and Approvals

We wish to repeat our support for the importance of technology planning in improving student achievement. Effective technology planning is an essential part of the educational process. We continue to favor having technology plans approved by the July 1 start of the funding year or whenever discounted services begin, whichever is later. We also believe that the current certification in the Form 486 continues to be the best way to certify the approval. We found agreement for this in the comments of StateNets, E-Rate Central, and the Alaska State Library/Alaska Dept of Education.

With the passage of No Child Left Behind (NCLB), there are major changes to technology planning for both state education agencies and school districts in order to receive any federal education funding. These changes include strict new measures for state agencies to receive and administer funds as well as additional and new requirements for districts. Because of these new NCLB requirements, it is unrealistic for the FCC to place new and additional requirements on technology planning that are not in line with those of the U.S. Department of Education (USDOE) and the NCLB. Because of these new NCLB requirements and the amount of time commitment required by state department of education technology staff in completing and implementing their NCLB plans, it is unrealistic to expect more work for technology plan approvers that does not have a direct link to NCLB and student achievement.

As part of NCLB, the USDOE is mandated to conduct a national study on the conditions under which technology is effective in increasing student achievement. This study will certainly include research on the components of technology planning that are essential. In this light, neither the FCC nor the SLD should set stipulations for what constitutes an effective technology plan. Hence, we disagree with Dell and with BellSouth comments, which ask the FCC to stipulate or require more rigorous compliance. Such planning components should be developed by educators based upon educational research into what type of technology planning results in improved teaching and student achievement; this should not be technology for technology's sake.

In regards to timing, it is unrealistic to have technology plans completed by the time the Form 470 is filed, which is usually between August and December of the year preceding the July 1 start of services. This would require districts to begin their technology plans in the spring preceding the funding year for which they are designed; a full 15 to 18 months before the services are scheduled to begin. While we understand the Commission's intent that districts have a clear, well-planned vision for what they want to do with the technology prior to requesting the services on the Form 470, it is not feasible for a quality plan to be developed so far in advance of the funding year. Most states take their technology planning efforts very seriously, and to dictate that they must require plans to be developed so early would be tying the hands of the very agencies that have responsibility, both financial and otherwise, to provide outreach and guidance to districts at a point in the year that is not in concert with their well-planned schedule. Also, many state master contracts are bid shortly after the start of the new E-rate funding year in July. If technology plans must be approved by this date that would mean that a lead of approximately one year would be necessary. Requiring technology plan approvals that far in advance would render the plans meaningless for E-rate purposes.

SECA also notes that moving the approval date forward not only places an undue burden on applicants, it also places a burden on the approving state or local entities. Many of SECA's members represent state education departments that are the primary approvers of plans for public and some non-public schools. The FCC should not demand even more, and now expedited work from States and local approval entities, as virtually all state and

local budgets have been cut and no administrative assistance has ever come from the E-rate program itself. We also restate here our initial comments on the need to better coordinate E-rate and NCLB programs. Many states still don't have their own NCLB applications completely approved and do not yet have guidance to their districts on preparation of the technology plan components for NCLB. We ask that the FCC and SLD work with the USDOE to coordinate technology plan requirements with the new NCLB requirements.

Finally, we note that the majority of applicants only receive E-rate funding for telecommunications and Internet. Most applicants do not currently receive funding for internal connections. The majority of technology plan attention is for services NOT covered by E-rate such as computers and related hardware, instructional and data management software, teacher training and other curriculum-focused goods and services. Accordingly, we wish to make a small, but significant correction to the comments of one party that stated, in part, "technology plan requirements apply only to internal connections and internet access." We wish this were true, but it isn't. Only basic telephone service is exempt from technology planning, all other telecommunications services, including Centrex service, must have an accompanying technology plan.

In response, SECA asks the FCC to direct the SLD and its designated auditors to match their technology plan review criteria with a sense of the program's ultimate purpose. Reports are surfacing that auditors and reviewers are writing up cases where an applicant entity fails to cover *all* of the E-rate discounted services in their technology plans. This includes services such as local voice services, cell-phones and other telecommunications services that are not part of most school's technology plans, school improvement plans or other strategic plans that link technology to improved teaching and learning outcomes.

Maintaining and Establishing Applicant Choice Among Discounts and Reimbursements

We oppose AT&T and Verizon's request to permit them to use a modified reimbursement process as a replacement for discounted billing. While reports from our applicants note that this system is more advantageous than the current BEAR reimbursement process, we

feel strongly that by granting their request, the Commission will be reversing their decision to provide applicants with the choice of discounted bills or reimbursements. If service providers are permitted to use a substitution for discounted billing, none would ever take the steps necessary to finally provide discounted bills as the Commission originally intended in their original Order.

The Commission cited up-front cash layout as a major reason to permit applicants to choose discounted billing. But another important and equally compelling reason for providing applicants with discounted bills, that the Commission did not mention, is that the applicants will be relieved from completing yet another form to receive their discounts. Applicants already are required to submit at least three forms to the SLD in order to apply for E-rate discounts, with the BEAR form being the fourth. By permitting vendors to not discount bills, the Commission is in no way helping applicants with streamlining the application process. A fourth form would continue to exist; it would just be directly through the service provider instead of the SLD.

Nevertheless, we applaud AT&T for their on-line reimbursement process. Those applicants that have chosen to use it have reported to us that they appreciate its ease of use. However, in order to best reflect our direct experience with the applicant community, we again emphasize our primary point; applicants should not be required to use it. Applicants need to have the freedom of choice between BEAR reimbursements and discounted bills as envisioned in the Commission's May 1997 Order. We urge the Commission to stand firm on their original ruling and finally permit applicants to receive discounted bills without further effort.

On a related matter, we applaud and support MCI's constructive recommendation to require applicants to choose their method of discounts on their Form 471 in order to provide vendors with ample notification through the Receipt Acknowledgement Letters (RALs) and Funding Commitment Decision Letters (FCDLs). Verizon also seeks clarification from the Commission that service providers are under no obligation to provide discounted bills until after the Form 486 approval letter is received. Their point is well made, and we further urge the Commission to clarify that applicants who receive

late 486 approval letters should not be forced to relinquish their right to choose discounted bills. In other words, because the applicant may have paid 100 percent of their July, August and September bills, they should not then be required to use the reimbursement method to receive their discounted funding.

Treatment of Large and Consortia Applications

Many SECA members frequently deal with issues pertinent to large, regional, or statewide consortium applications that are managed by government-funded entities. We restate our position that specialized, focused consideration be given to such large-scale applications, primarily because they represent the very purposes of E-rate: consolidation of technologies and purchases around the most cost-effective models; accountability within stringent government procurement and accounting oversight; and representation for applicants who otherwise could not benefit from discounted services because the process is too burdensome and lengthy for them. For three additional reasons these specialized applications deserve special processing: (a) they are few in number (approximately 100 annually), yet encompass thousands of applicant schools, districts, and libraries; (b) they are complex beyond the capacities of many of those in SLD unfamiliar with technology deployment on this scale; and (c) in a budget climate where states and the applicants they represent are often in financial peril, the delays associated with processing these applications can be the final factor that leads to a shrinkage or cessation of essential or universal connectivity.

Online Eligible Services List

SECA's initial comments supported the concept of an online Eligible Services List (ESL). Several commenters such as the New York Public Library, EdLiNC, and Sprint, described a variety of concerns about the implementation of an online ESL for Priority Two services. Considering the expressed concerns, a pilot of the online ESL seems prudent. We suggest, as does the Alaska State Library/Alaska Department of Education, that the pilot of an online ESL be designed to address the stated concerns and focus on the list of eligible Priority Two before the expansion of the list to Priority One services is considered.

Modification of Priority 2 Discount Matrix

The ALA, Wisconsin Department of Public Instruction, Bell South, ISBE, and Greg Weisiger commented on adjustments to the discount matrix. The Waste, Fraud, Abuse Task Force recommended a ceiling of 80 percent for internal connections. SECA's initial comments proposed to reduce the internal connection discounts for applicants in the two highest discount bands to 70 percent. We reiterate that reducing the maximum discount rate to 70 percent will potentially address some occurrences of waste, fraud and abuse related to 90 percent applications. The 70 percent cap will necessitate that applicants seek cost effective for E-rate discountable services. In their initial comments, E-Rate Central provides a quantitative analysis of reducing the maximum Internal Connection discount rate. E-Rate Central's analysis concludes "that a revision in the discount matrix to reduce the maximum Internal Connection discount rate to 70 percent would reduce demand in the high discount bands to more normal levels and would thereby make Priority Two funding available to a broader cross-section of E-rate applicants. By reducing monetary incentives for waste, fraud, and abuse, the recommended revision might also permit the SLD to streamline its review process, thus making critical funding on a more timely basis."

Duplicative Services

We agree with the NexTel comments asking for clarification of duplicative services. The guidance should define for applicants and SLD reviews, that wireline and wireless services that serve a school or person are not necessarily duplicative. For example, a school administrator might have both wireline and wireless phones; this should not be considered duplicative services. Similarly, the ISBE, ALA, NASTD and others commented that there are situations where there may be an appropriate overlap in services when switching service providers. There are certainly conditions under which services, on the surface may appear duplicative, but are not because of ultimate use, timing and valid business reasons. Again, guidance for the implementation of duplicative services must defined well in advance of the Form 471 window.

Conclusion

SECA reiterates its appreciation to the Commission for its positive steps with the Second Order Report and Order. We look forward to receiving clear and timely guidance regarding the new rules that will assist applicants in preparing Year 2004 applications. As always, Alliance members are available to work with the Commission and SLD to provide assistance as new regulations are considered to further improve the E-Rate program.

Respectfully submitted,

On behalf of the State E-rate Coordinators Alliance

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