Before the
Federal Communications Commission
Washington DC 20554

In the Matter of:

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

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

On behalf of the
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Table of Contents

Forward

The State E-rate Coordinators' Alliance (SECA) is appreciative of the Commission for issuing the Third Report and Order addressing a number of E-Rate issues of concern to applicants. SECA also appreciates the opportunity afforded by the Second Further Notice of Proposed Rulemaking to provide more specific comments on issues that SECA and other members of the E-rate community feel are vital to the improvement and stability of the program. We look forward to the Commission's review of these comments and stand ready to assist with the implementation of these reforms.

These comments represent the opinions of state E-Rate coordinators from approximately 40 states. Representatives of SECA typically perform first-level, face-to face, E-Rate training for applicants and service providers and act as intermediaries between the applicant and service provider communities, the Administrator, and the Commission. Further, several members of SECA administer and are applicants for large, statewide networks and consortia that further Congress' and the FCC's goals of providing universal access to modern telecommunications services to schools and libraries across the nation.

In addition to our roles as State E-rate trainers and coordinators, most SECA members also provide the following services to the program:

- technology plan approval;
- applicant verification assistance to the Administrator's Program Integrity Assurance (PIA) Division;
- verification to the Administrator of applicable state laws confirming eligibility of certain applicant groups;
- contact of last resort to applicants by the Administrator;
- verification point for free/reduced lunch numbers for applicants.

Hence, SECA members are thoroughly familiar with E-Rate regulation, policy and outreach at many levels of the program, from administrator to applicant.

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 may be reflected in direct comments from SECA members and member states. In these Initial Comments, SECA members do not address every area of the NPRM; nevertheless, these comments reflect areas of consensus among the diverse members of the group on issues of importance to the group as a whole.

Discount Matrix

In this section, the Commission seeks comment on the effectiveness and efficiency of the current discount matrix used to determine support payment for eligible applicants, products, and services. Over the last three years, in past NPRM comments and in hearings and meetings before the FCC and SLD, SECA and individual states have pushed for significant changes to the discount matrix. We once again offer comments in this important area.

Simply put, SECA believes that the current discount matrix for Priority 1 services should be maintained. However, we believe that in order to achieve greater equity, efficiency, and to discourage waste, fraud and abuse, the maximum discount level for internal connections services (Priority 2) funding should be capped at 70%.

SECA believes the vast majority of program waste and abuse occurs with internal connection funding requests, particularly at the highest discount level. In many cases, internal connection vendors have made a concerted effort to target high discount applicants with sometimes extravagant, expensive and often unnecessary internal connection equipment and services (Order at 41).

While we concur with the Commission's desire to ensure connectivity in the nation's poorest schools and libraries, we believe that a 10-15% match does not provide a sufficient incentive for applicants to limit their internal connection funding requests. SECA's analysis of funding requests for the first five years of the program strongly indicates that the 10% match creates an opportunity for service providers to propose more services than necessary to adequately serve applicant needs and an incentive for some applicants to purchase excessive services.

Turning once again to the discount matrix for Priority 1 services, we agree that one of the primary charges of the E-Rate program under the Telecommunications Act of 1996 is to provide connectivity for schools and libraries. Therefore, the 90% discount for connectivity, particularly for poor and isolated applicants, is necessary and should not be changed. SECA notes that there appears to be relatively little evidence of waste or abuse with Priority One applications at all discount rates

Also, we believe that there are several important safeguards within the Priority 1 service group to minimize any potential for waste, fraud, and abuse. Among these are that most competitive and emerging competitive telecommunications services have publicly posted, tariffed, or easily accessible rate sheets to guard against price abuses. As well, the FCC and SLD have much better scrutiny over the payments to telecommunications carriers, as the carriers themselves will only discount on-going services

through the SPIF process, or provide BEAR Form reimbursements after an accounting of actual costs during the year.

Conversely, evidence from the FCC and SLD audits points to limited instances of waste and abuse in the internal connection category of service, thus leading to the enormous increase in demand for funding.

In terms of Priority 2, Year 2003 initial demand for internal connection funding requests from 90% discount applicants totaled almost $2.5 billion. This demand required an applicant match of almost $250 million for those internal connection requests. By contrast, total demand for telecommunications and Internet services for 90% discount applicants in the same funding year totaled only $250 million. In other words, the local ten % match for internal connections funding requests would have covered the entire request for Priority One services.

In order to provide more internal connections (Priority 2) funding opportunities for those schools and libraries in the discounts bands below 90%, SECA members propose a change in the discount matrix for internal connections. Using the current Urban/Rural discount matrixes, we propose to reduce the internal connection discounts for applicants in the two highest discount bands to a rate of 70% (***changes noted in italicized bold***). 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%, internal connections should be funded for Priority One discounts of 89%, then 88 and so on until all funding is exhausted.

SECA proposes the following Discount Matrix be adopted:

INCOME As measured by % of students eligible for National Lunch Program	PRIORITY ONE URBAN Discount %	PRIORITY ONE RURAL 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%***

SECA believes that a minimum 30% applicant match, versus the current 10% match, would significantly diminish program waste and abuse. We firmly believe the 70% cap would allow more schools and libraries in the 50 to 80% discount categories to receive internal connections funds, as most of these have not seen any significant internal connections monies since Year 2 of the program. We respectfully disagree with the Waste, Fraud and Abuse Task Force's recommendation that the cap be set at 80%, and we encourage the Commission to take this rare opportunity to make this significant reform to the discount matrix and set the internal connections cap at 70%.

SECA members from E-Rate Central in New York have analyzed Funding Year 2000 internal connections demand based upon the Priority 2 discount matrix cited here (recommended 70% cap). This analysis shows that by lowering highest discount bands to 70%, more normal demand levels could be anticipated and Priority 2 funding could be available to more schools and libraries. (See Appendix 1 for an explanation of why FY2000 qualifies as a baseline year and for statistics analyzed in the study by E-Rate Central).

The Commission requested comments to address implementation issues surrounding any proposed changes. One question asked what should be done if there are insufficient funds remaining under the annual cap to support all requests for discounts at a particular discount level. The Commission stated the current policy is to allocate funds on a pro-rata basis among applicants at the particular "cut-off" point for available funds (47 C.F.R @54.507(g)(l)(iv). We believe that this policy -- in place, although not yet used by the SLD – is an appropriate policy and methodology to assure that as many eligible applicants as possible receive some internal connections discounts to purchase much needed LAN equipment.

In response to questions regarding how best to transition to a new matrix level, we submit here that the best way to avoid problems is to give applicants ample time and notice of the new matrix. Applicants should be alerted as soon as possible of the new matrix and rules. We recommend that the Commission not wait until applicants have already submitted 470's and 471's for Funding Year 2005, then give notice of a new discount matrix. Applicants will accommodate their budgets, purchases and network plans if given ample notice. To extend debate even further on this issue can only make it more difficult for applicants. A decision should be made and publicized soon. The Commission acted appropriately in the Third Report as it pertains to the frequency of discounts for Priority Two services in Funding Year 2005

(see Third Order at 12). The FCC should strive to do no less with any proposed changes to the discount matrix.

In terms of how certain applicants will be affected by an internal connections cap of 70%, in most states, the 90% discount schools have taken the opportunity over the previous six funding years to purchase needed equipment and to wire their schools. Certainly, the 80 and 90% discount applicants will have to pay an additional 10 - 20% for the cost of their internal connections purchases. But we believe that even the poorest applicants must take additional responsibility to ensure that waste and abuse of program funds is diminished or eliminated. With great rewards comes great responsibility and an E-rate discount on technology equipment is still an enormous reward – even at 70%.

Competitive Bidding Process – Changes to the Form 470

The Commission requested comment on the effectiveness of Form 470 to solicit competitive bids and whether this process serves its intended purpose.

In order to foster competition and ensure that pre-discounted prices were as low as possible, the Commission established a requirement in the May 8, 1997, Report and Order that mandated applicants competitively bid the services for which they were seeking discounts. To fulfill this requirement, applicants are required to post a Form 470 on the Administrator's Web site for at least 28 days.

SECA members contend that Form 470 regulations should be modified to reflect lessons learned in six years' experience. While SECA applauds the Commission's goals of this requirement, SECA believes that the posting of services has not produced the intended outcomes.

We find that the current Form 470 contains at least two serious flaws and does not currently meet the goals established by the Commission:

(a). The Form 470 does not result in competitive bids for most applicants. 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 either their incumbent providers or 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 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.

(b). The Form 470 has at least four "gotchas" that needlessly cause applicants to be denied funding. First, the administrator has provided information that says 2% of applications are denied funding because of 28-day posting violations. Because applicants are often confused between their own local and/or state procurement timelines and those of the E-Rate program, applicants may actually be following local and state procurement rules but violate the "28-day" E-Rate rule, thereby being denied funding.

Second, an additional 3% of applications are denied funding for failure to sign a 470 certification page. As the Form 470 is a bidding vehicle, not a form to request program funds, the certifications that are made on that form are irrelevant except to seek certification that the entity submitting the form is authorized that they may bid on behalf of the entity listed as a recipient of service.

Third, applicants often innocently fail to accurately predict future needs. Since the Form 470 is filed so far in advance of the upcoming funding year, applicants may not realize that the existing 56K Internet circuit will be inadequate in the following year. Under current practice if the applicant lists a 56K Internet circuit on the Form 470 and later determines at the time of 471 filing that student and teacher usage exceeds last year and necessitates a larger connection to the Internet such as a T-1 line, such a request would be denied because a T-1 line was not specifically listed on the Form 470.

Fourth, applicants are too often denied funding on the basis of failure to check one of the Form 470 "Categories of Service" boxes which asks applicants to let the SLD know that they intend to purchase services under tariffed, month-to-month, or contractual services. In competitive and emerging competitive markets, the "purchasing format" distinctions under these "categories" have no real significance any more -- and the SLD should not use the answers to these questions to deny applicants.

As we have commented on several occasions, we believe changes, both large and small, need to be made to the program in order to move away from "denial-based" processing to "entitlement-based" processing. We recommend a serious overhauling of the Form 470 process to correct its deficiencies, especially since it currently fails to meet its primary objective of soliciting competitive bids.

Cost-Effective Funding Requests

In this section, the Commission asked for comments on how to define and implement a rule to require applicants to consider whether a particular package of services is the most "cost-effective" means of meeting its technology needs. The Commission added that if such a rule were adopted, what would be the "test" for what is considered a "cost-effective" service? What should be the benchmarks (i.e. cost per student, total cost of ownership, etc.)?

SECA believes that the Commission should focus on the post-471 review process to better monitor the ***outcome*** of the 470 process. Therefore, it stands that the Commission initiate some standard of review to assure that applications fulfill this standard. We believe the SLD already has an "unofficial" database that has specific internal connections product information and prices from vendors in order to better assess the reasonableness of requests. Whether this database has "market" or "manufacturers suggested retail prices" or some other price target to assess reasonableness we do not know. However, we believe that such a database can assist the SLD in assessing the "cost-effectiveness" of applicants' requests for products and services. We believe the Commission should expand the use of such a database to accomplish its goals, not rely on the Form 470 to encourage and enforce cost-effective applicant requests.

Cost effectiveness is a local issue and will become less of an E-rate issue if and when Priority 2 requests are capped at 70%. As written, we are extremely concerned that "cost-effectiveness" will become yet another SLD certification that is impossible to implement. The intentions of this issue are valid but cannot be achieved by yet another rule. If the Commission believes that local entities and the established procurement processes cannot be trusted to result in cost-effective prices, then they must decide how much less of those local costs they are willing to pay.

Recovery of Funds

The Commission sought comment on whether rules should be adopted to recover funds disbursed in violation of statutory and/or programmatic regulations. We understand the need to recover funding from applicants and/or service providers when funding has been committed in error, but we caution the Commission to not judge all funding errors alike. In cases where blatant and deliberate abuse of program funds has occurred after funding was committed or where requests for discounts were deliberately misrepresented in order to dupe the PIA reviewers, we believe applicants and/or service providers should be responsible for repaying the fund.

In terms of how such program abusers should be treated on an on-going basis, we believe this should be handled on a case-by–case basis. The easy answer is that program abusers should be put on either a suspended list or have their applications put into Selective Review for years to come. But it has been our experience that in cases where applicants have abused or committed fraud on the program, all bad actors participating in the fraud were immediately dismissed and a new team was brought in to help the applicant recover from the actions and to ensure that future applications are above reproach.

Keep in mind that it is not uncommon for the SLD to be guilty of improperly funding applications through no fault of the applicant. In most cases, services have begun and/or equipment has been delivered and use of the intended service/equipment has begun by the time the mistake is realized. In cases where SLD, through their own research or through an audit, realizes they have committed funding in error, it is not fair to make the applicant repay the fund when services have begun and/or equipment has been installed. There must be a line in the sand by which applicants can be assured that a funding commitment letter is just that – a commitment. If applicants believe an SLD "commitment" can be revoked at any time, even years later, it does little to invoke confidence in the program. With ever-changing eligibility lists and rules, it is unthinkable that an applicant should be required to repay the fund when the FRN was mistakenly approved by the SLD.

Consultants and Outside Experts

The Commission sought comment on whether applicants should be required to identify any consultants or outside experts, whether paid or unpaid, that aid in the preparation of an applicants technology plan or in the applicant's procurement process. Also, the Commission sought comment on whether consultants and outside experts offering their services to applicants should be required to register with USAC and to disclose any potential conflicts of interest derived from relationships with service providers.

SECA believes that unless carefully targeted, rules that identify and register "any" party providing technology planning or any rules that prohibit service providers from providing "any form" of services would deprive many applicants of needed expertise and would unduly constrain legitimate marketing practices of technology providers. In this area, the Commission needs to distinguish between assistance to complete the application process and assistance in choosing a vendor. Assistance in completing forms and plans should be allowed through consultants, whether directly or indirectly supported by vendors or not. However, the Commission should make clear that the actual decision on which vendors are chosen stays clear from influence by vendor funded consultants or employees.

The Commission needs to understand that the application process is a complicated undertaking for nearly every applicant, particularly as more and more rules are added by the Commission and the SLD to the competitive bidding process. Not all applicants have enough staff to fully map out and define their technology needs, especially as it relates to internet access and the internal connections products and services needed to gain classroom connectivity. Therefore, many do rely on consultants, vendors, and others to help them map out what they need to procure. In fact, schools often learn of cost-saving innovations from vendors or consultants.

We do not doubt the need to make sure the procurement process and, in particular, the vendor selection process need to be above reproach and free from manipulation. Hence, the key point in the process is influence by an outside party on the actual choice between vendors

The Commission should realize that applicants will continue to rely on vendors to assist them in the "what do we need to connect?" part of the process, but this does not necessarily result in a higher pre-discount cost – the issue that should be of first importance. As well, vendors and vendor-funded consultants have been helping applicants with the completion of E-rate forms – in many cases, it's the applicants themselves that have asked for this help, as SLD phone and web-site based assistance is not enough to complete the application and discount / reimbursement process.

And finally, we believe that having consultants, whether they be vendor-hired consultants or independent E-rate consultants, include their name and contact information on the district's applications is a sound, ethical practice which may provide the SLD with a system to track unscrupulous consultants. We doubt, however, that it will result in the change of any consultants' current unworthy business practices.

Technology Plans

The Commission sought comment on whether a cost-effectiveness analysis should be a new technology plan requirement, whether the current requirements should be amended to be more consistent with the U.S. Department of Education (USDOE) planning requirements, and whether approving agencies, including states, should have additional qualifications imposed.

SECA is concerned by the Commission's consideration of codifying current SLD technology plan requirements to include an analysis of leasing vs. purchasing services and plans to implement cost-effectiveness in purchasing services to meet educational objectives (Third Report at para 94). SECA is concerned that the Commission is considering using educational technology plans as annual purchase lists of telecommunications services and products, not the educational plans they need to be.

A sound educational technology plan is not a "wire and box" plan. Nevertheless, the Commission's latest ***Ysleta-***based rulings are having that effect for applicants and reviewers. Looking back, we believe the Commission did not envision such a situation when Congress first defined universal service. In its March 8, 1996, NPRM and Order, at para.72 the FCC noted that:

> "…access to telecommunications services is important to schools, classrooms, libraries, and rural health care providers for a number of reasons. Congress explicitly recognized the importance of telecommunications to these educational institutions and rural health care providers in enacting

> this legislation…The provisions of [Section 254] subsection (h) will help open new worlds of knowledge, learning and education to all Americans rich and poor, rural and urban. They are intended, for example, to provide the ability to browse library collections, review the collections of museums, or find new information on the treatment of illness, to Americans everywhere via schools and libraries. This universal access will assure that no one is barred from benefiting from the power of the Information Age."

We believe that the Commission needs to come back to the original goal of the technology plan -- to map out how technology will be used to improve teaching and learning. The Commission should allow the USDOE to define the educational technology plans purpose and not have the "wires and boxes" version of tech planning define the outcome. The intent of the educational technology plan needs to remain the integration of the use of modern telecommunications services to improve teaching and learning and to provide every student and citizen new and improved educational opportunities. We believe that Congress' original intent was to assure that modern telecommunications services would improve teaching and learning, and, overall, quality of life for everyone. Under the current Commission guidelines, technology plans are referred to as educational plans but are evaluated by SLD as E-rate purchasing plans.

Currently, E-rate tech plans are approved for SLD by state-level agencies with no compensation and usually without any additional staffing. Because the benefits of the E-rate program are recognized and appreciated, the state-level agencies have accepted this added burden into their already full-time professional duties. If program rules now change to require an increase in the load of work already done without recompense, many state-level agencies may decide to forego the burden and allow the SLD to find some other way of having plans approved.

We ask that the Commission refrain from burdening technology plans even further and seek cooperation and guidance from the USDOE and States on a technology plan that comports with the entire section from the FCC's 97-157 May 7, 1997, Report and Order (para 572-574). This section does no more than state that applicants should "do their homework" before submitting their applications. It also noted that schools already have technology plans for No Child Left Behind's requirements for Enhancing Education Through Technology requirements. We believe that these plans also should be approved for use by the E-rate program.

If, however, the Commission determines that an E-rate specific technology planning document must contain the administrative, operational, and purchasing needs of the applicant, then a separate E-rate document needs to be used nationwide which includes only those items necessary for the E-rate program Administrator. This would require that applicants develop two technology plans: (a) Their current

educational technology plan such as is developed and approved under USDOE and state specifications and; (b) An E-rate specific plan which must be updated and amended each year. If such a policy is adopted by the Commission to have an E-rate specific plan, then the E-rate document would need to be reviewed and approved by the SLD and not by the state-level personnel. The E-rate document would likely be submitted to SLD as an attachment to the Form 470, 471 or 486. Since it would be strictly a listing of required data, it could easily be checked by PIA personnel as part of the application cycle. To ensure that schools actually had some educational purpose for what they request, approval of the actual educational technology plan which is required by every state, could still be queried as part of the application. This would allow SLD to get the information it wishes from a plan while allowing the state to set its own requirements and deadlines for a truly educational document.

Finally, we do not believe that the technology plan is the appropriate mechanism for determining the leasing vs. buying option. For example, a local school or district committee may conclude that distance video delivery of classes would meet their educational goals. However, a discussion of leasing versus buying wouldn't need to take place until the actual decision for implementing that service occurs which may be 2 to 3 years later. And, in point of fact, the educational value of the service would not be affected either way (lease vs. buy). Thus, the distinction of leasing vs. buying would have no place in a truly educational outcome-based technology plan. The choice would be strictly a business decision and should be kept away from the technology plan.

Use of Surveys to Determine School Lunch Eligibility

Income surveys are an important part of the program, filling the gap for those schools that are not part of the National School Lunch Program. This includes many non-public schools and those schools that do not receive a high number of returned forms, a problem especially true for many public and non-public high schools in the program. For many, these surveys are considered the most onerous part of the application process by school districts. This is especially true for very rural states and where there are a large number of small communities where English is not the first language and illiteracy among adults is rampant. In short, the FCC needs to understand that tightening on surveys will make a difficult situation even worse.

We urge the Commission to codify that survey results may be used for two E-rate program years. This has been the prevailing practice and, in fact, has been presented as practice at the annual Train the Trainers workshops conducted by SLD staff. However, it is not listed on the SLD's website and thus has created some concern where we believe there should be none.

Wide Area Networks and Dark Fiber

With regards to the many issues facing wide-area networks, we would like to concentrate on one issue – the eligibility of dark fiber. SECA members are clearly of the opinion that district applicants, libraries and consortia should have the ability to procure dark fiber from vendors when it is the most cost-effective service available. In short, as markets evolve, as technology progresses, and as more vendors are setting up infrastructure to provide services, applicants need to be able to lease dark fiber on the same terms and conditions as other services.

Congress and the FCC have made "full flexibility" to choose among telecommunications services a core of this program (FCC 97-157 – Universal Service Report and Order, May 1997 para 433). In a rapidly-changing technological environment, full flexibility will empower applicants to implement those goals. We therefore urge the Commission to allow applicants to lease dark fiber on the same terms and conditions as other services.

We note here that the Program already allows non-telecommunications vendors to provide Internet access through various forms of technology, including re-selling various forms of bandwidth, including dark fiber arrangements. Why can't an applicant, who has the knowledge and expertise to "light" and implement the dark fiber be allowed to do so directly? To not allow it is in direct violation of the program's own policy foundation of allowing applicants the full flexibility to procure the most cost-effective services.

Evergreen FRNs

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 Priority One services previously approved and funded such as recurring telephone, multi-year contracts, or broadband connections. The review of Priority One service applications that are exactly or essentially the same from year to year are subject to the same rigor as more complex applications, as well as 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% 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. SECA 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.

SECA 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. SECA contends that this proposal will streamline the review process by increasing the use of automation, thus speeding application review.

SECA believes that this universe of applications has a small risk of waste fraud. 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.

SECA 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 (unless, of course, revisions to the 470 form are made as in earlier discussions).

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 the 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 could be required to file a Form 470 each year if the Commission decides to retain the current 470 structure, 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

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 Web site. 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, more importantly, 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.

Based upon experience, SECA believes that the CSB, operated by a contractor to the Administrator, is not staffed by individuals with enough knowledge to 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. Frequently, the only responses given are to direct questions by the word-for-word repetition of information directly from Administrator website documents. There is 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 under this sort of discussion 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 the services are indeed ineligible. 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.

SECA 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." Rather they would question what the applicant is trying to achieve and would provide the larger picture in terms of not only what is eligible but how the applicant may want to consider adjusting their proposal to make sure it is 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.

SECA believes the above proposal would solve two problems: (a). It would curb the revolving door of PIA staff and; (b). it 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 our observation that the CSB often provides less than accurate answers when advising applicants and service providers on eligible services and filing procedure. SECA 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.

Reversal of the 30% Unsubstantiated % Policy

SECA agrees that the Commission's original codification of the "30 % Policy" as a positive step to address waste. In this policy, a funding request can be denied when 30 % or more of a discount request includes ineligible services.

However, SECA vehemently disagrees with current SLD implementation of the policy, which has expanded to include "unsubstantiated" service requests. The SLD's new implementation of the 30 % policy does more to assure that legitimate requests are not funded, than guaranteeing that ineligible requests are denied. Applicants who find a need to revise a request downward more than 30% are being denied on this basis, even though the downward revision saves the program money and is being done voluntarily and benignly on the part of the applicant.

SECA contends that this implementation of the 30% 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 SLD 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 the case of "30 % 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. Some sense of fairness to the applicant community needs to be exhibited.

SECA submits that this implementation of the "30 % rule" - 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 SLD some limited latitude to deny entire funding requests where they believe blatant price inflation has occurred. However, to intentionally deny applicants in the "30% unsubstantiated" group their rightful funding - due to simple mistakes which applicants are willing to quickly correct - is contrary to the goals of the Telecommunications Act. The SLD's past practice was much more fair and appropriate - reviewers lowered the request to the substantiated amount of eligible services - miscalculations and mathematical errors were adjusted and remedied in the review process.

SECA also recognizes the need for applicants to be as accurate as possible with discount requests. However, mistakes on both sides occur within a program as complicated and administratively burdensome as the E-Rate. To use the "30% rule" as it is currently being implemented and not allow the SLD leeway in adjusting funding requests is simply not fair to the applicant community.

Conclusion

SECA reiterates its appreciation to the Commission for its bold, positive steps with the Second and Third Report and Order. SECA 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 11th day of March, 2004

Gary Rawson on behalf of
The State Coordinators' E-Rate Alliance