Before the
Federal Communications Commission
Washington, DC

In the Matter of:

Schools and Libraries Support Mechanism	)	Docket Number 02-6

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

The State E-rate Coordinators Alliance (SECA) is pleased to provide reply comments on the Schools and Libraries Program Third Report and Order and NPRM under FCC docket number 02-6. Once again, 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 our reply comments, listed below, we provide a number of potential ways to help accomplish our shared goals:

Comments of Note:

Discount Matrix

SECA is pleased to see that so many organizations share our concerns regarding the current discount matrix. Many commenters agree that a change to lower the discount matrix for internal connection (Priority 2) services will result in a reduction of waste, fraud and abuse. Applicants, states, service providers, consultants, and the Waste, Fraud and Abuse Task Force all recommended lowering the discount matrix for Priority 2 services.

SECA has been proposing a reduction to the discount table for at least two years. We concur with On-Tech's assertion that "altering the discount table will result in a more equitable distribution of Priority 2 funds consistent with regulatory goals, as well as help in the reduction of waste, fraud and abuse….The highest discount for Priority 2 funding should be reduced to 70%." SECA reiterates that by reducing the discount level to 70% for Priority 2 funding, schools and libraries in the discount levels below 90% will finally have the opportunity to obtain more of the much-needed Priority 2 funding opportunities.

We do not, however, agree with some commenters that suggest reducing the discount matrix to 80%. SECA reiterates that the maximum discount level for Priority 2 funding should be capped at 70% in order to achieve greater equity and discourage waste, fraud and abuse. SECA does not agree with CoSN and ISTE's comment that "forcing the neediest, at whom this program is targeted, to pay larger proportions of eligible service costs may make it impossible for them financially to apply for discounts." The program's intent was to fund the neediest applicants FIRST, but not exclusively. Those neediest applicants have

received all requested funding in every year of the program and the result has been that most of the nation's 90% schools are connected. The Commission must realize that there is not much difference in the financial and technological needs between the 90% and the 60% schools, as well as those in between. SECA promotes the notion of more equity for all schools and libraries. This notion will not undermine the most economically disadvantaged schools and libraries; it will, however, allow more schools and libraries to have the opportunity to apply for Priority 2 funding.

Several other commenters state that the FCC should wait and see how the two-out-of-five rule impacts waste, fraud and abuse before making a change to the discount matrix. SECA believes that there is no other single rule change that will be as effective in reducing waste, fraud and abuse as the lowering of the Priority 2 maximum discount to 70%. While we agree with the intended purpose of the 2/5 rule, we feel that this rule by and in itself will do little to distribute funds to the lower discount levels and will not prevent waste, fraud and abuse within the program. We fear that applicants will simply load up their applications during the years that they are eligible. Rather than seeking $20 million per consecutive year, they would simply seek $40 million the year they are eligible.

In addition, while we understand that many commenters feel that lowering the discount would adversely affect their district funding because it would provide less funding for their 90% schools, we would remind those commenters that the schools with 80%, 70%, and even 60% discounts would now qualify for funding. The dollars would not be lost, they would be distributed more evenly throughout the applicant community.

The only sure motivator for applicants to spend wisely is to require applicants to better utilize their own available funds to meet their non-discounted portion. If a 90% school must collect their 10% obligation for three years before they are able to make a purchase, then reducing the discount matrix to 70% serves the same purpose as the 2/5 rule, but in a much more manageable process. Reducing the discount matrix for Priority 2 services to a 70% maximum would serve to limit the availability of matching funds, and require more local financial effort, thus accomplishing the goal of encouraging responsible utilization of available funds.

Technology Plans

SECA does not support codifying current SLD technology plan requirements in their present form. We reassert our position that the original goal of the technology planning requirements was to improve teaching and learning through the use of technology. Many commenters share our concerns that the new emphasis on the use of the technology plan to address issues of waste, fraud and abuse and cost-effectiveness has changed it from an educational planning document to a technical planning document. We strongly feel that a technology plan should not be expected to act as a preliminary RFP.

In particular, we agree with all of the commenting organizations that a technology plan is "not … the appropriate venue for determining cost-effectiveness or leasing vs. purchasing options" (EdLiNC). A discussion of leasing versus purchasing "should be addressed as part of the actual procurement process." (Tim Aumann)

We also support those commenters who support efforts to align technology planning requirements with US Department of Education planning efforts. In past years, plans written for appropriate federal and state programs have been accepted as qualifying for E-Rate purposes. In para. 574 of the May 8, 1997 Federal-State Joint Board on Universal Service (FCC 97-157) Report, the Commission delineated its requirements for technology planning and other activities to assure that applicants were making educational decisions when requesting support:

> 574. To ensure that these technology plans are based on the reasonable needs and resources of the applicant and are consistent with the goals of the program, we will also require independent approval of an applicant's technology plan, ideally by a state agency that regulates schools or libraries. We understand that many states have already undertaken state technology initiatives, and we expect that more will

> do so and will be able to certify the technology plans of schools and libraries in their states. Furthermore, plans that have been approved for other purposes, e.g., for participation in federal or state programs such as "Goals 2000" and the Technology Literacy Challenge, will be accepted without need for further independent approval.

Further, in para 420 of the December 30, 1997 Fourth Order on Reconsideration (FCC 97-420) in which the Commission reviewed the technology plan requirements, it again reiterated that plans approved for other purposes should be considered approved for E-Rate so as to not place undue burdens on applicants.

> 149. The Commission determined in the *Order* that it would not be unduly burdensome to require eligible schools and libraries to conduct a technology assessment, prepare a plan for using these technologies, and receive independent approval of such plans. Moreover, the Commission took steps to eliminate unnecessary burdens, and prevent the need for duplicative review of technology plans. The Commission noted that many states have already undertaken state technology initiatives and that plans that have been approved for other purposes, e.g., for participation in federal or state programs, such as "Goals 2000," will be accepted without need for further independent approval.

Two national organizations concerned with education state in their comments "CoSN and ISTE believe that any specific technology plans instituted by the Commission should be consistent with the technology plans that states, districts and schools must devise to receive federal education funding." SECA agrees with their position on this issue.

Also, most commenters agreed with the SECA position that imposing additional requirements on the plan approval agencies is not only unnecessary but would overburden agencies which are already providing the Administrator with an unremunerated service. As noted by the Arkansas E-Rate Workgroup, "If a different technology plan is required by E-rate, it should include only the required elements and be attached to one of the existing [SLD] forms. The SLD should then approve them (not the states)."

Using the technology plan process to address cost reasonableness and waste, fraud or abuse is an auditor's solution for an accounting problem, not an educational one. Other suggestions addressing waste, fraud and abuse made in our original comments, as well as in these reply comments, will actually reach those goals in a far more efficient way.

Competitive Bidding and Form 470

SECA notes that commenters expressed strong sentiments concerning the competitive bidding process. In this section, we emphasize three issues directly related to the competitive bidding process: a) Applicable state and local procurement laws should govern the competitive bidding process, b) The Form 470 process does not result in competitive bids; the Form 470 should be eliminated, c) Applicants should self-certify on Form 471 that they have complied with applicable procurement laws.

a) *Applicable state and local procurement laws should govern the competitive bidding process*.

Although the Commission did not specifically solicit this issue, the fundamental principle of following state and local procurement laws is directly related to competitive bidding. In the earliest years of the E-rate program, the Commission emphasized that applicable state and local procurement laws should govern the E-rate competitive bidding and purchasing process. SECA is concerned that in recent years, the Commission has <u>not</u> abided by this basic foundation of the E-rate program and has used the Form 470 process to override state and local procurement laws. Applicants too often find themselves wrestling with conflicting interests of state/local procurement laws and E-rate regulations. (Does the applicant violate state procurement laws to follow E-rate rules? <u>*or*</u> Does the applicant follow state procurement laws and risk losing E-rate funds?) We contend that the Commission's tightening

of the Form 470 process has too often put applicants in an untenable situation with regard to competitive bidding. We urge the Commission to return to their initial position that applicable state and local procurement laws govern E-rate applicants.

In those situations where there are no applicable state and local procurement laws (e.g. non-public schools), guidelines for competitive bidding should be developed by the SLD. Such guidelines would be applicable only in those situations where applicants have no state or local procurement laws governing them.

b) *The Form 470 process does not result in competitive bids and the Form 470 should be eliminated.*

Almost half of the commenters agreed with SECA's recommendation for a "serious overhaul" of the Form 470 along with reforms towards simplification of the application and approval process.

In paragraph 63, the Commission solicited comments about whether the Form 470 process "typically results in competitive bids." We noted that commenters overwhelmingly responded that the Form 470 process did not generate competitive bids. As state E-rate coordinators, we concur with these commenters. It is our observation that the Form 470 does not serve its intended purpose to solicit competitive bids.

Several commenters (On-Line, Ed-Linc, PA Department of Education, OSNC, Alaska Department of Education, WI Department of Public Instruction, Illinois State Board of Education, among others) suggested eliminating the Form 470 process for basic telecommunications services and/or all Priority 1 services. SECA offers our concurrence with this position.

In pointing out additional shortcomings of the Form 470, several commenters (IBM, Qwest, Kellogg & Sovereign) suggested that Form 470 does not provide enough information to allow service providers to prepare and offer competitive bids. We agree that the current structure does not provide all the information necessary to determine service requirements. We submit that no form, nor any on-line posting, will cover all the details necessary to bid – vendors must make contact with applicants and review the services before bidding. In short, no single form will take the place of the vendor's responsibility to contact the applicant.

SECA does not agree that even more complex service descriptions and/or RFP's for all services on the Form 470 will result in additional competitive bids. Mandatory RFPs and more complex 470s would only increase applicant denials and frustration.

In our original comments, we contended that the current Form 470 is fraught with several trivial "gotchas" that too often result in E-rate applicants being unnecessarily denied funding. Since it does not fulfill its purpose of soliciting competitive bids, we strongly urge its elimination.

c) *Applicants should self-certify on Form 471 that they have complied with applicable procurement laws.*

As noted by several commenters, the Form 470 does not serve its purpose of soliciting competitive bids. We do concur that applicants have a responsibility to follow a competitive bidding process and should certify to the SLD that they have followed applicable laws. To provide this assurance, we recommend that applicants self-certify on the Form 471 that a competitive bidding process was followed and that the applicant is in compliance with any applicable state and local procurement requirements. There is precedence for this practice on Form 471 with the Item 25 self-certification. Following the example of the already established practice with Item 25, PIA reviewers could request evidence of compliance with competitive bidding as part of a selective review.

Priority for Applicants not Connected

SECA agrees with the FCC's intent to make sure that all schools and libraries are "connected." However, as currently described, we feel that the issue needs more research and study to be implemented

correctly. First, we need to define "connectivity" to determine the proper solution. We also need to know who these schools are, and why they are not "connected." Moreover, we feel that the FCC will address lack of "connectivity" in these schools and libraries by implementing our recommendations in the Discount Matrix, Competitive Bidding Process, and Technology Plan sections of this NPRM.

In defining the lack of connectivity issues, we distinguish the two distinct components of classroom connectivity to the Internet. In general, commenters lumped these two components together in discussing connectivity. Connectivity is composed of at least two distinct eligible E-rate services, one of which is Priority 1 funding and the other is Priority 2:

a) On-going, generally monthly, payments for transport services and access to the Internet (Priority 1) *and*

b) Non-recurring telecommunications "wiring" or "wireless connections" within the school to the classroom (Priority 2)

In order for individual classroom Internet "connectivity" to be realized and maintained, both of the above conditions must be met. The level of classroom "connectivity" must recognize that classroom Internet access is not a static situation. We are particularly concerned that statements made in other venues have questioned whether the E-rate program should be continued when the vast majority of classrooms have "connectivity." Such naïve statements ignore the fact that even when schools have installed telecommunications "wiring" within the schools to the classroom, the schools require on-going support from the E-rate program to provide Internet access fees. Further, our experiences with schools show that the Internet bandwidth requirements continuously increase as educational uses of the Internet expand learning opportunities for students.

While we understand what the Commission may be trying to achieve by placing priority on unwired schools and libraries, we believe that it would be virtually impossible to administer. SECA maintains that lowering the maximum discount for internal connections to 70%, rolling over unused funds from year to year, and restricting the replacement and moving of equipment to every 3 years will achieve the intended purpose of wiring the unwired schools without having to establish an actual priority system.

Determining Whether Rates Are Affordable

As the technology of the industry is changing from analog to digital, a change in infrastructure is required to accommodate the available bandwidth that is needed for educational purposes. Where a ten-megabit network with hubs was reasonable in 1998, the content used in the classroom today requires greater bandwidth and faster speeds. Increased competition is creating downward price pressure as well as increasing demand. Therefore affordability must be measured by cost, ability to pay for the service and quality of service.

To measure cost the SLD has the ability in their database to look at cost comparison and to calculate local and regional averages. This can be done for equipment and installation cost for internal connections as well as tariff services and line cost and installation for telecommunication services.

The ability to pay is based on local economic conditions and influences that can change drastically from the time that the application process begins to the time when funding is approved. This makes monitoring ability to pay for services on an institutional basis nearly impossible. However, an available alternative is to determine cost averages as cited above.

To say that because the 75%+ poverty level has been served by receiving E-Rate subsidies, while the larger number of students in the thirty-five percent band (sixty percent discount) have been denied funding in six of seven years of the program, is not fully addressing affordability. Until the funding reaches down to the lower discount bands, the program fund needs to measure affordability by access to the advanced services, which are not available to a large number of schools and libraries. This affordability is directly related to the $2.25 billion dollar cap on the fund approved by the Commission.

Consultants & Outside Experts

SECA stands by our comments 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 Priority 2 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, applicants often learn of cost-saving innovations from vendors or consultants. We believe that this issue should be considered in two parts: 1) consultants on the E-rate process that may also help with filling out forms and; 2) consultants providing assistance on technology and technology planning.

1) Consultants on the E-rate process and help with filling out forms.
   The person signing the form is ultimately responsible for its content. Numerous commenters, however, cited the complexity of this program, which increases the need for consultants to assist with the application process. We believe that having consultants include their name and contact information on the applications is a sound, ethical practice which may provide the SLD with a system to track unscrupulous consultants.

2) Help with technology and technology planning.

We agree with the comments of E-Rate Central that, "A rule that would prohibit vendors from providing any form of technical assistance would be highly disadvantageous particularly to small and medium sized applicants who cannot afford the hiring of fully independent consultants." Applicants need the help of vendors and consultants in the process of implementing technologies in schools and libraries. A process that impedes this communication is not in the interest of applicants or business. Just because a vendor consults with an applicant to solve a problem using technology, does not mean they should be excluded from providing services within the E-rate. Rules should not preclude vendors currently hired by an applicant from applying for future E-rate projects. The process of examining products from vendors in the light of functional needs is healthy and should be encouraged not punished. Current rules prohibit service providers from filling out the form 470 for the applicant. We fully support the continuation of these rules.

We understand from other comments that there are good reasons for instituting a registry of consultants, however we urge extreme caution because this raises many questions. How is "consultant" defined? Are there different rules for paid, unpaid or vendor consultants? Will state E-rate coordinators, state agency personnel, ESA personnel, or parent volunteers have to register? Will there be training and/or assessment required of consultants? Who would deliver and subsequently, pay for, training and assessment? Are there minimum standards for consultants? Who will manage the database of consultants? How will the database be used and what violations will lead to penalties? What will the penalties be? Do consultants incur liability for denied applications due to mistakes and/or malfeasance?

We would like to point out that a consultant registration program would add more expense and administrative burden to an already complex program. These costs should be carefully weighed against the possible benefits of a consultant registration process.

Miscellaneous:

Staffing

In order to expedite the processes of application approvals and decisions on appeals filed with either the FCC or SLD, we support efforts by USAC to identify deficiencies leading to lagging processing of applications, appeals and invoice payments. SECA supports any efforts to secure additional staff to ensure better customer service, to increase responsiveness, and to expedite the review, funding and appeal processes.

Rollover of Funds

We share AASA's concern regarding use of Universal Service contributions for the schools and libraries program to offset increased demands for the high cost and low-income program. We urge the Commission to maintain its stance in the Second Order to roll over committed but unspent funds to future E-rate funding years.

Centrex and Other Telephone Switching Systems

Although we realize Centrex is technically not a basic telephone service, we support ALA's position that the FCC should treat Centrex as a basic telephone service. Under the current rules, a technology plan would be necessary for any applicant utilizing Centrex services. We do not support this position. We further believe that in treating Centrex as basic telephone service, the treatment should be expanded to include services provided by PBX systems, key systems, and any other system serving similar functions. We do not believe that the eligibility of the systems themselves should change, but rather the eligibility of the services *provided by* those systems. The United Talmudical decision referenced by ALA supports this argument. In addition, voice mail and other phone features this year deemed non-basic should be considered basic and we urge the Commission to make this clarification.

Applicant Training

Several commenters urged the Commission to fund, improve and increase training opportunities for E-rate applicants. Training is the foundation upon which to build a program that is devoid of waste, fraud and abuse, as well as the means to maximize efforts to insure that a digital divide does not exist between urban and rural communities. Presently, training funds are not available through the E-rate program, and it is our position that the availability of funding to states would decrease the amount of waste, fraud and abuse.

30% Unsubstantiated Rule

SECA, like many other commenters, urges the Commission to revisit the 30% unsubstantiated rule. We agree that a codification of the "30% Policy" -- whereby a funding request can be denied when 30% or more of the request is for ***ineligible service*** -- is a step in the right direction to address waste. However, we disagree that in its current implementation it is either fair or appropriate. During this last funding year, the SLD has interpreted this rule to also apply to good faith estimates of eligible services. As of this year, good faith estimates of eligible services that exceed 30% of the original amount are not amended in the review process, but instead, are now summarily denied. This implementation of the rule has now turned into a bludgeon that does much more to discourage and quash legitimate requests, rather than guaranteeing that wasteful, ineligible requests are denied.

Distribution of Support Payments

SECA supports the position of those commenters that urge the Commission to NOT codify the rules for distribution of support payments. In the past, the SLD has worked with applicants and vendors in granting extension request in a variety of cases. This flexibility helps to alleviate problems caused by personnel turn over. We support E-Rate Central in their assertion that greater leniency can be tolerated to assure that applicants can benefit from awarded funding.

Wide Area Networks

SECA concurs with the majority of the comments supporting reasonable limits on the upfront costs of WANs that may be supported by the E-rate program. Rules and/or procedures governing such limits should make it clear that the upfront costs refer to installation charges or other non-recurring costs

incurred by applicants, which are eligible for E-rate discounts, *not* to the underlying infrastructure costs incurred by the telecommunications carriers (a distinction that was not clear in the NPRM).

An upfront charge limit of 25% of total annual recurring and non-recurring charges would be consistent with the financial nature of a telecommunications service. One advantage of a limit at this level is that it would eliminate the need for the SLD to rule on the currently subjective determination of "effective purchase" of WAN facilities. A percentage limitation is a sufficient condition. It would alleviate the need for separate dollar limits and amortization requirements that discriminate against large city applicants and consortia, such as the 67% and $500,000 amortization rules. A 25% rule is simple to understand, administer, and removes the blurry line between what is infrastructure, what is an upfront cost, and what is on-premise, Priority 1 equipment.

Should the Commission adopt the 25% rule, we strongly urge that applicants that have previously amortized large capital investment projects over several years, be grandfathered until those amortizations are complete. For example, if an applicant signed a 3 year contract in 2003 which had $1 million in infrastructure costs, they would have spread out that fee over 3 E-rate funding years ($333,333 in 2003, 2004 and 2005). We believe it would be largely unfair to now require those applicants to attempt to renegotiate their contracts and budgets to meet the 25% rule. The 25% rule should be for all newly signed contracts.

SECA notes and understand the conflicting comments of the ILECs and CLECs with regard to the nature of dark fiber facilities, but believes that E-rate policies should remain independent of these competitive considerations. Applicants should be free to choose the most cost-effective and flexible solutions to their Wide Area Network needs. Applicants willing to purchase on-premise modulating equipment, much of which may not be E-rate funded, should be able to rely upon the Priority 1 eligibility of any inter-facility network services provided by an eligible telecommunications carrier. In this context, we believe that dark fiber should be an eligible service.

Many of the comments on dark fiber, and indeed the NPRM itself, fail to properly distinguish between "dark" and "unlit" dark fiber. While these adjectives may be used interchangeably in some circles, they have distinctly different meanings within the E-rate rules as expressed by the SLD. "Dark" fiber, as defined in the SLD's Eligible Service List refers specifically to a fiber system provided by a service provider that does not also provide the modulating electronics. As a telecommunications service, the fiber is presumably in use – or "lit" – but with electronics provided by the applicant, not by the carrier. It is not "unlit." Any rules involving dark fiber systems must be written to clarify this definitional issue.

If "dark" fiber is to become ineligible for FY 2004, as contemplated in the current rules, the FCC must clarify and confirm recent SLD guidance that the provision of TX-to-FX converters by the carrier as the "modulating electronics" is a sufficient condition for "non-dark," or "lit," fiber WAN eligibility. Based on this SLD guidance, a number of existing multiyear contracts for previously "dark" fiber systems have already been rewritten. Neither the applicants nor the fiber carriers should be subjected to these changes and uncertainties again.

Recovery of Funds

We are gravely concerned at the ability of the Commission and/or the Administrator to seize or recover committed funds from applicants or service providers without the right of due process. It is particularly troubling when the Administrator adjusts a funding commitment after services have been delivered and funding has been disbursed, or when the Administrator withholds funding after receipt of an invoice. Excepting fraud or attempt to defraud of the program, we strongly believe it is unfair to reclaim funds from well intentioned applicants and/or service providers who made honest mistakes not discovered by the Administrator during the course of application review.

We completely agree with SBC Communications on the Recovery of Funds issues in the following categories:

- No funds should be recovered when improperly disbursed due to errors of the Administrator.
- No funds should be recovered where recovery is not cost-effective.
- Recovery should be waived for rule violations that are minor or do not materially undermine the integrity or policies of the program.
- Parties should have an opportunity to contest recovery.
- Commission cannot seek recovery of more money than was improperly disbursed.

We have guarded reservations with SBC's suggestion that "Funds generally should be recovered from the party responsible for, or that benefited from, the improper disbursement." This would constitute a complete reversal of current regulations, which require the Administrator to recover funds primarily from service providers. Language in SBC's comments suggests that the Commission limit recovery from service providers to instances of service provider waste, fraud, abuse, or program rule violations.

We urge the Commission to use utmost caution and develop fair and concise regulations for recovery of funds from applicants. Current regulations under the Commitment Adjustment Order limit the Administrator to recovery of funds for funding of ineligible services, funding in violation of statute, and funding for telecommunications service from an ineligible telecommunications provider. Additionally, the administrator must recover funds from service providers under current regulation. We reiterate our initial comments that fund recovery be handled on a case-by-case basis and recovered from the appropriate party.

We note that commitment adjustments after services have been delivered but before payment has been made by the Administrator amounts to a seizure of funds without adequate due process. Such commitment adjustments typically occur when the Administrator reviews applicant BEAR submissions or service provider SPI submissions and determines payment should be withheld. When the Administrator withholds payment for BEAR submissions the recovery of funds is infact shifted from the service provider to the applicant, as the applicant has paid the service provider the entire invoice amount. We believe this action violates the intent of the Commission's Commitment Adjustment Order by essentially recovering funds directly from applicants.

We feel strongly that applicants and service providers should receive an expedited review and opportunity to contest situations where work has been performed and payment withheld by the Administrator. We reiterate our initial comments in the Third Report and Order and NPRM: "<u>There must be a line in the sand by which applicants can be assured that a funding commitment is just that – a commitment.</u> If applicants believe an SLD "commitment" can be revoked at any time, even years later, it does little to invoke confidence in the program."

Considering the ever changing rules and regulations of the E-Rate program, we believe it is inconceivable for applicants and service providers to know all FCC regulations and Administrator policies at all times, particularly when regulations or policies are not published (30 % unsubstantiated policy, for example) or are not crystal clear. We agree with numerous commenters that commitment adjustments for minor rule or policy violations or Administrator errors should not be allowed.

There are rare instances where service providers and applicants collude to submit fraudulent discount applications. In such instances, fund recovery should be made from BOTH the applicant and the service provider.

In the absence of the ability to assign responsibility for improper fund commitment, we believe the Administrator should seek to reclaim funds from the party that received funds from the Administrator. We are aware that that this would mean additional liability for applicants if direct payment to applicants is allowed, but if applicants have committed fraud upon the program, it is only fair that they should be made to repay the fund.

Finally, we believe that by amending the rules to state that recovery could come directly from applicants, we have removed the final barrier to direct BEAR payments to applicants. For years, we have heard that the Telecommunications Act of 1996 prohibits payments directly to applicants. As we have stated in several previous filings (initial comments on the First Report and Order and NPRM, April 5, 2002 and the Second Report and Order and NPRM, July 18, 2003) we have researched the language in the Act, and there is absolutely no statutory prohibition against applicants receiving direct reimbursement when the applicant has paid full price for service. Additionally, we have been told repeatedly, "the vendor BEAR pass-through is actually a benefit to applicants because it keeps the Commission from recovering funds from the applicant." If the Commission complies with the requests we have stated above, this barrier, obviously, will be removed as well.

Conclusion

The State E-rate Coordinator's Alliance (SECA) applauds the FCC for their continued efforts to improve the E-rate Program. We feel that the recommendations that SECA has presented will not only strengthen the program and streamline the application process, but will also serve to mitigate waste, fraud and abuse of the program.

The SECA membership is well versed in the application process, and each state coordinator is in daily contact with their state's applicants. As a result, our comments reflect the state of the program and the views of the applicants not only from a local perspective, but also from a broad base of national experience.

SECA looks forward to continuing to work with the FCC in its endeavors to make the E-rate program more successful for all of those involved.

Respectfully submitted on behalf of the State E-rate Coordinator's Alliance,

Gary Rawson
Mississippi Department of Information Technology Services
301 North Lamar Street, Suite 508
Jackson, Mississippi 39201