

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

In the Matter of)	
)	
Comments on Petition for Reconsideration)	CC Docket No. 02-6
By Sprint and Bellsouth of requirements)	
established in the Fifth Report and Order)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	

Comments of the State E-Rate Coordinators' Alliance

In accordance with Section 1.415 of Commission rules, the State E-Rate Coordinators' Alliance (SECA) is pleased to respond to the Commission's call for comments on the important matters brought forward by the Sprint/Bellsouth Petition for Reconsideration and supporting comments by Verizon (Petitioners).¹ The Commission seeks comment on two issues raised in the Petition for Reconsideration: (1) the determination that, if an E-rate beneficiary has not paid its non-discounted share of charges for eligible E-rate services within 90 days after delivery of service, all funds disbursed should be recovered; and (2) the inclusion of certain certifications relating to competitive bidding on the Service Provider Annual Certification Form, FCC Form 473.

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 Universal Service Administrative Company (Administrator), and the Commission. Further, several members of SECA administer and are applicants for large, statewide networks and consortia that further the goal of providing universal access to modern telecommunications services to schools and libraries across the nation.

¹ Sprint and Bellsouth Petition for Reconsideration filed October 13, 2004; Comments by the Verizon Companies in support of the Sprint and Bellsouth Petition filed December 6, 2004.

Without hesitation and unanimously, SECA wholeheartedly supports Petitioners' call to overturn the 90-day payment provision imposed by the Fifth Order on Reconsideration.² We agree with Petitioners that an across-the-board presumptive requirement that payments of the non-discounted portion of E-Rate eligible services be made within 90 days of the completion of delivery of service is unrealistic and not reflective of the marketplace. Further, the dire consequences of potential Commitment Adjustment and demand for return of all funding for violation of this regulation requires thorough consideration and thoughtful approach by the Commission. Petitioners correctly note that the Commission imposed this payment timeframe in the absence of public comment, advance notice, or filings in the record supporting a 90 day payment timeframe. Petitioners and SECA are at a loss to understand the Commission's logic with implementation of this requirement considering the fact that no service provider or applicant raised the issue as a concern in public comments with the Commission.

Like Petitioners, SECA supports the requirement that applicants must pay the non-discounted portion of E-Rate services. We also agree that applicants should pay the non-discounted share in a reasonable timeframe. We believe however that the vast majority of applicants pay invoices in a timely fashion and question the need for the 90-day payment regulation.

The Fifth Order on Reconsideration clarified a number of issues of concern to applicants, service providers and the Administrator. In particular, the Commission provided specific guidance regarding E-Rate rule violations that would result in an adjustment to a funding commitment and possible demand for return of disbursed funds. Violation of Competitive Bidding Requirements, Necessary Resources Certification, Service Substitution, Duplicative Services, Failure to Complete Services Within the Fund Year, Discount Calculation Violation, Failure to Complete Service for the Full Year, and Failure to Pay the Non-Discounted Share will result in fund recovery from applicants or service providers. Indeed, since imposition of the Fifth Order, the Administrator has established a post-commitment, pre-disbursement review group to ensure funding is disbursed in accordance with the Fifth Order. Many invoices submitted to the Administrator, representing previously reviewed, funded, and utilized services have been reduced or denied by this new group in accordance with the Fifth Order clarifications. Appeals for those reductions and denials are now working their way through established appeal mechanisms.

² Fifth Order on Reconsideration, FCC 01-190, Released August 13, 2004 at 24.

90-Day Payment is an Unreasonable Expectation

Petitioners argue that the 90-day payment requirement does not reflect the reality of business. We agree with Petitioners that complexities of E-Rate rule compliance and the nature of the types of services associated with E-Rate funding often causes the initial invoice being issued in excess of 90 days of receipt of service. We agree with petitioners that vagaries in billing cycles and timing of service termination can result in timely payments being made more than 90 days after services have been delivered.

Based on the persuasive evidence presented by Petitioners and similar experiences of SECA members, we must conclude that a requirement to pay the non-discounted portion of E-Rate services within 90 days of service delivery date is wholly unreasonable. We also agree with Petitioners that the consequence of non-compliance with this rule is excessively harsh.

Like Petitioners, SECA members question the need for a regulation as prescriptive as this. We note that Petitioners assert that non-payment of invoices by E-Rate applicants is an insignificant problem. We do however recognize that unscrupulous service providers, sometimes in collusion with applicants have schemed to defraud the program with no-payment or kickback arrangements. We also recognize that a few service providers have arranged long-term payment programs for the non-discounted share of E-Rate discounts. We must emphasize that non-payment schemes or kickbacks are patently violations of E-Rate rules and long term payment plans have been offered by only a few service providers. Again, untimely payment of invoices is not an issue of consequence.

As of this writing, the current backlog of invoices at the Administrator exceeds 90 days. An applicant submitting a Form 472 (BEAR) today may not expect the invoice to be processed by the Administrator before late May. Because payment cannot be made directly to the applicant and must pass through the service provider, an applicant submitting an invoice today may not receive payment before July 1, 2005. If the Administrator, with almost unlimited resources at its disposal, cannot process invoices within 90 days, how can the Commission require applicants and service providers to adhere to such a schedule? Petitioners correctly assert that invoicing and accounting for E-Rate discounts is inherently complex, requiring a great deal of back-and-forth communication in many cases. The Commission must

understand that invoices cannot be paid until all parties are in agreement that service has been rendered fully and properly and that invoices are accurate and accurately reflect E-Rate eligible services. The Commission must not penalize service providers and applicants for being prudent and ensuring that all services have been installed and are functioning properly before issuing invoices or making payments.

Respectfully Submitted this 16th day of February 2005,

/s/ Gary Rawson

Gary Rawson, Chair

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