



December 9, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
455 12th Street, SW, Room TW-A325
Washington, DC 20554

**COMMENTS ON TWO PETITIONS FOR FURTHER WAIVER OF COMMISSION RULES TO
EXTEND RELIEF PROVIDED IN FCC 05-178 TO DIRECTLY AFFECTED SCHOOLS AND
LIBRARIES IN LOUISIANA, MISSISSIPPI, AND TEXAS**

Dear Ms. Dortch:

The State E-rate Coordinators' Alliance (SECA) submits these comments in response to the Commission's request for comment on two petitions for further waiver of E-rate rules filed by the Hurricane-affected states of Louisiana, Mississippi and Texas. These petitions followed the Commission's issuance of its October 14, 2005 at FCC 05-178 concerning relief measures for the areas ravaged by Hurricane Katrina. We understand and support the Commission's efforts to provide those affected entities with both immediate monetary relief as well as relief from many pertinent rules and procedures in order to help them rebuild and repair as quickly as possible.

The Louisiana and Mississippi Joint Petition requests that the Form 471 filing window for Funding Year 2006 be extended from February 16, 2006 to September 30, 2006 for affected entities, and proposes to pay for the requests filed during the extended portion of the window with the current rollover funds of approximately \$365 million. The petition suggests that if the window extension is not granted, the affected applicants will be forced to request equipment and/or services they may not need – but may nonetheless feel compelled to request during the filing window so as to not miss their opportunity to obtain 90% discounts -- because they may not have enough time to assess, plan and procure their technology replacement needs.

We have several questions and comments pertaining to this request. First, the rollover funds that are proposed to be used were also suggested in a previous filing by the affected states to be used during the current Katrina application window.¹ In its October 14, 2005 Order, the Commission too suggested that these funds could be available should the \$132 million not be adequate. The Commission stated:

The Commission's rules require the Administrator to report the amount of unused funds available from prior funding years on a quarterly basis. Based on our past experience, significant funds are identified as available for use in future funding years. In fact, the E-rate Coordinators from Alabama, Louisiana, and Mississippi estimate that unused funds from prior funding years will be available to carry over for Funding Year 2005 and could be used to fund Hurricane Katrina restoration. Because we are re-opening the funding year 2005 filing window, such funds previously identified as unused by the Administrator may be available to provide support to the

¹ Letter from Gary Rawson, Mississippi Department of Information Technology Services to Chairman Kevin Martin, FCC (Sept. 19, 2005) ("Rawson Letter" as described in the October 14, 2005 FCC Order).

disaster-struck schools and libraries. We recognize that demand for services from the schools and libraries struck by Hurricane Katrina may vary after these entities complete their internal reviews and prepare the necessary program applications. We will closely monitor this situation and, to the extent unused funds from prior funding years are available, we anticipate that these funds will be used and that Priority Two funding may be available for additional applicants.²

We urge the Commission to decisively and unequivocally rule now – not later – that rollover funds will be used first to pay for any additional demand in excess of the estimated \$132 million that the Commission already allocated to the Katrina applicants. Because the special Katrina window for FY 2005 has not yet closed, the associated demand has not yet been calculated and finalized. This lack of certainty – coupled with the FCC's statements in its October 14, 2005 Order regarding the potential use of rollover funds for FY 2005 – has created an information vacuum, and inertia has settled in for all other non-Katrina affected applicants' priority 2 funding requests. Currently, priority 2 funding has been frozen to all entities with discounts below 90%, even though the SLD board authorized funding to at least the 87% discount level. Further, based on the April 2005 demand projection that USAC submitted to the FCC after the close of the regular FY 2005 filing window, and based on historical demand and subsequent commitment levels, we believe that funding eventually will be available to applicants with internal connections funding requests ranging at least from 80% through 89%.

The current funding freeze for priority 2 internal connections requests with a discount below 90% for non-Katrina applications adversely affects extremely poor applicants across the nation – including non-Katrina related schools and libraries in Louisiana and Mississippi -- with discounts below 90% as they put technology and associated curriculum projects which are dependent on the E-rate procurements -- on hold to see whether their requests will be funded. There has always been a degree of uncertainty when it comes to internal connections funding based on fluctuating demand from year to year, but as previously stated, applicants had strong reason to believe based on recent demand patterns that funding would be available to at least the funding requests down to the 80% level. In order to be fair to the other financially challenged applicants in the country, we urge the Commission to immediately authorize USAC to release funding for FY 2005 priority 2 funding, less \$132 million that was set aside in the original Katrina Order, and to rule that any demand from the current Katrina window that is above the \$132 million will come from the \$365 million rollover funds.

With regards to the extended FY 2006 application filing window, we believe that any consideration of this second special filing window must take into account that the \$365 million in rollover funds must first be applied to FY 2005 demand. Should any funding remain from the \$365 million from the FY 2005 special funding window that closes on December 13, 2005, SECA is not opposed to using those remaining funds to fund Katrina entities that cannot meet the February 16, 2006 deadline for filing FY 2006 applications. However, we strongly oppose the use of any of the FY 2006 \$2.25 billion to fund any applicant that has not met the February 16, 2006 filing deadline. If demand from the FY 2006 special filing window exceeds the funding that remains from the \$365 million, the Commission will need to establish rules of priority for those funds. Should any of the \$2.25 billion be used to fund these applications, the country once again will be held hostage while we await demand from the extended filing window.

We should note, however, that in not opposing yet another special filing window for Katrina-affected entities, SECA remains concerned that the Administrator must commit significant resources and staff to administer a second filing window – resources that are then diverted from processing applications for the remaining 30,000 applicants, and key staff that take significant time ensuring that the affected entities understand the rules and deadlines of the special filing window. If a second filing window is established, we urge the Commission to allocate a portion of the \$365 million for the hiring of additional staff to process the applications and be the point-people for the Katrina-affected entities in order to mitigate the delays and impact to the non-Katrina affected applicants in the country that are also extremely dependent on timely funding and administrative decisions.

² FCC 05-178 at ¶ 45.

The petition also requested that the 2/5 rule exemption be extended to Funding Year 2006. If the Commission believes that such an exemption is needed and will not be abused, we do not oppose this request, thus potentially providing certain entities 4/5 years of internal connections funding. We further believe that requiring all Katrina-related Form 471 applications seeking such administrative relief to first be reviewed and approved by the respective States' E-rate Coordinators will certainly help to mitigate the potential for such abuse.

The Texas petition set forth a significant argument that the de minimis standard the Commission suggested in their Katrina-Order (10% NSLP increase) is a higher standard than even the most affected entities can meet. Clearly, this is not what the Commission intended and we agree that the adoption of a lesser or different standard should be used. Our suggestion is that it should be on a case-by-case basis, likely based on an actual need for additional equipment to support the influx of new students, rather than a formula approach. Again, seeking prior approval of the State E-rate Coordinator before such a request is made to USAC would ensure that the request is legitimate and we urge the Commission to extend this requirement to these applications as well.

The Texas petition also requested that entities affected by Hurricane Rita also be afforded the same funding opportunities and rule waivers as those provided in the Katrina-Order. There appears to be no good answer to this request. If the Commission deemed Hurricane Katrina's devastation as so extreme that significant measures were taken to provide relief, then entities affected by Hurricane Rita also should be afforded the same relief. However, should the Commission grant Hurricane Rita with the same waivers and funding, it will further exacerbate the adverse impact that is being felt by the other poor applicants in the country. But more importantly, it leaves the Commission in the untenable position of where to draw the line. How will the Commission ever be able to deny a petition by affected states when subsequent Category 5 hurricanes come ashore in 2006? And 2007? What will the Commission do when tornadoes ravage mid-America? Or earthquakes occur in California? The precedent that will be set and the impact to all states that will be felt by extending the Hurricane Katrina relief to other natural disasters cannot be overstated and we urge the Commission to carefully consider this when making their decision.

In summary, we have commented to the Commission in several previous filings that the E-rate program is frustrating, unpredictable, and a moving target to applicants and we respect and support Chairman Martin's goals to streamline the program and improve it for all applicants. It is with those goals in mind that we respectfully request that the E-rate program not become an emergency-relief fund from this point forward and that the impact to non-Katrina affected entities be as minimal as possible. There are other federal funding sources available for disaster recovery, but E-rate is the only federal funding program that's available to all schools and libraries for the sole purpose of creating and sustaining telecommunications and internet services.

We are saddened and left without words to see the devastation that has occurred in Louisiana and Mississippi and we support the current Katrina application window and relief of administrative rules and deadlines that simply cannot be met by these affected entities. We simply request that the rollover funds of approximately \$365 million be used to fund the current application window should demand exceed \$132 million, that non rollover funds for FY 2005 be released immediately to fund priority 2 requests for applicants with discounts below 90%, and that any further relief be funded only with what remains of the \$365 million after the FY 2005 special window has closed and not be funded with any of the FY 2006 annual \$2.25 billion.

Respectfully submitted,

State E-rate Coordinators' Alliance (SECA)