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

In the Matter of	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6

PETITION FOR THE CLARIFICATION OR WAIVER OF E-RATE RULES CONCERNING STATE REPLACEMENT CONTRACTS UNDER THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE SUPPORT MECHANISM

USAC has an existing procedure to deal with funding requests submitted for services covered by state master contracts that are scheduled to expire, but are expected to be renewed, in the middle of a funding year. The procedure works reasonably well for recurring service contracts, but becomes highly problematic when applied to non-recurring service contracts. A potentially simple fix to this problem is available, but its implementation hinges on an interpretation of the Commission's contract extension rules. This Petition asks the Commission to clarify and/or waive the E-rate contract extension rules under the Schools and Libraries Universal Service Support Mechanism as applied to state replacement contracts.

The State E-Rate Coordinators' Alliance ("SECA") submits this petition to address a narrowly-defined, but problematic, procedural E-rate issue affecting a number of school and library applicants in a number of states. The SECA organization is comprised of individuals providing statewide E-rate coordination activities in 43 states and territories. Representatives of SECA typically have daily interactions with E-rate applicants to provide assistance concerning all aspects of the program. SECA provides face-to face E-Rate training for applicants and service providers and serves as intermediaries between the applicant and service provider communities, the Administrator, and the Federal Communications Commission (FCC or Commission). Further, several members of SECA work for and apply for E-rate on behalf of 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 the 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; and verification point for free/reduced lunch numbers for applicants. Hence, SECA members are thoroughly familiar with E-Rate regulations, policies and outreach at virtually all levels of the program.

Background

The normal E-rate application cycle requires applicants to have contracts in place and to file FCC Form 471 applications in early February, well in advance of the actual funding year for which services are required. One alternative that applicants have to meet the E-rate contract requirements is to use their states' master contracts. Since these master contracts are bid and negotiated on a statewide basis for use by a broad constituency, the services available are often highly cost-effective.

From an E-rate perspective, however, one problem with state master contracts is that they often expire, or at least come up for renewal, at various dates. These expiration dates seldom correspond with the end of the E-rate funding year. Acknowledging this problem, USAC has an established procedure that allows applicants to file for discounts on services to be provided under state master contracts that expire in the middle of the funding year for which applications are to be filed.

The State Replacement Contracts procedure covering this situation is discussed in detail in the Reference Area of the SLD Web site (see Scenario B for mid-year expirations at http://www.universalservice.org/sl/applicants/step04/state-replacement-contracts.aspx). Briefly, the procedure calls for an applicant to file two separate funding requests — one FRN for services to be received under the existing contract until the expiration date, and a second FRN for services to be received for the remainder of the year under a new or renewed contract. Because details of the renewal contract are not known at the time the applicant's application needs to be filed, the procedures permit the use of a "dummy" SPIN and an artificial, funding year end, contract expiration date. Subsequently, if the funding is approved and the contract is renewed, the procedures require an applicant to file a SPIN Change to replace the dummy SPIN with the real SPIN and to submit a corrected copy of the FCDL to reflect the real expiration date.

For recurring services, the State Replacement Contracts procedure is a bit burdensome, but workable. Suppose, as an example, an applicant selects its state's Internet service provider for FY 2007 under a contract that is set to expire November 30, 2007. If the monthly service charge is $1,000, the applicant's FY 2007 application would include the following two FRNs which, taken together, would provide discounts covering the entire year:

1. A regular FRN requesting discounts on $5,000 for five months of services (7/1/2007 – 11/30/2007) under the existing contract service provider's SPIN; and
2. A State Replacement Contract FRN requesting discounts on $7,000 for the remaining seven months (12/1/2007 – 6/30/2008) under a dummy SPIN.

For a non-recurring service, however, the dual-FRN procedure creates a problem. Suppose, as a second example, an applicant wishes to install $10,000 of eligible equipment under a contract that is also set to expire November 30, 2007. Since the $10,000 is a one-time charge, it cannot practically be split between two FRNs. The applicant is faced with the following choices:

1. File one FRN requesting a discount on $10,000 in either the existing contract period or the prospective renewal period; or
2. File two FRNs, each requesting a discount on the full $10,000, one in each period.

Most often, an applicant chooses the second option so as not to tie itself to a specific installation period within the funding year. Much to USAC's dismay, this creates duplicate funding requests and artificially inflates the SLD's demand estimates. The applicant's hope is that, by the time USAC begins reviewing the application, the applicant will have better information about the installation schedule and/or the contract will have been renewed. The applicant will then be able to cancel one of the FRNs.

To avoid the duplicate FRN problem, a simpler solution would be to permit an applicant to file a single FRN, initially reflecting the pending contract expiration date, which could be extended to the revised expiration date (by filing a Form 500) if and when the state master contract is renewed.

Discussion

Based on informal discussions, it appears that USAC believes that its authority to permit a contract extension without an applicant undertaking a formal Form 470 re-bidding process is limited to situations associated with an automatic (or otherwise approved) service delivery deadline extension.

Our view of existing E-rate rules is a bit more expansive. We believe that a state master contract extension, properly negotiated (and based on a valid state-filed Form 470), fulfills the FCC's competitive procurement requirements. As such, an FRN based on a state master contract extension should be extendable upon proper notification to the SLD. An appropriate notification process using a Form 500 is already in place.

To provide a basis for simplifying USAC's State Replacement Contracts procedure for dealing with non-recurring services, we ask the Commission to clarify its contract extension rules to permit an applicant to extend a contract expiration date on an FRN on the basis of a state master contract renewal.

Alternatively, should existing rules not permit such extensions, we ask the Commission to modify and/or permanently waive its rules with respect to properly negotiated state master contract renewals.

Respectfully submitted:

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