

## SECA E-Rate Issues as of April 17, 2007

(Entities in parentheses after title of issue are those to whom we have addressed the issue.)

### NPRM -- Tech Plan Requirements (FCC)

A. We reiterate FCC should defer to state rules and regulations regarding tech plans. For most applicants there is an existing requirement for tech plans outside E-rate.

B. Alternatively, SECA petition on tech plan clarifications of 02/21/07:

- An applicant should be able to file a Form 470 based on an existing tech plan that includes the services on that 470, even if the tech plan does not cover the funding year for which the 470 is being filed.
- An applicant should be able to sign a multi-year contract for a period beyond the current tech plan. The applicant should be able to receive discounts for the later years if it has a tech plan including those services when it files a 471 for those later years.
- Tech plan requirements should not apply to consortium or state procurement processes. Applicants for discounts on those consortium or state-procured services should have written tech plans including those services when filing the Form 471.
- By the start of services, eligible entities receiving services should be covered by approved tech plans encompassing the fund year.
- Any tech plan deficiencies at any stage should cause suspension of processing until the deficiencies are corrected. No funds should be reduced until the applicant has an opportunity to correct deficiencies and fails to do so.

Centrex alone should not trigger a tech plan requirement.

### NPRM – Priority 2 Discount % (LECs, FCC)

- Cap discount percentages for priority 2 services at 70%.
- Maintain priorities for priority 2 funding based on priority 1 discount.
  - Ensures most disadvantaged applicants have adequate investment in these projects to motivate wise investments.
  - Spreads priority 2 funding over more disadvantaged applicants.

### **NPRM – Eliminate Form 470 for priority 1 services** (LECs, FCC)

- Form 470 has little value in procurement of priority 1 services – very few entities receive viable bids as a result of posting a 470 for priority 1 services.
- Form 470 requirements have resulted in an inordinate number of E-rate denials.
- Rely on state and local procurement requirements.

### **NPRM – Invoicing** (LECs, FCC)

- Direct BEAR payments to applicants
- Retain discount/SPI process, as well as BEAR process. Applicant should have the right to choose – see SECA ex parte comments 04/13/2007.
- AT&T Reimbursement Form -- overturn Order – see SECA petition 04/13/2007.

### **Pending FCC Appeals – Cost-Effectiveness Denials** (LECs, FCC)

- What is the standard against which cost-effectiveness is evaluated?
- How can the SLD establish cost-effectiveness standards considering the variations by state, region, student population, etc?
- Inconsistent with FCC statements that the FCC has not established cost-effectiveness standards.
- Inconsistent with the principle of technology neutrality and with meeting schools' needs.
  
- SECA supports cost-effectiveness reviews if standards are known and well documented and presumptions of cost-ineffectiveness are rebuttable.

### **Pending FCC Appeals -- Portland, Oregon – What constitutes an RFP?** (LECs, FCC)

- SLD denied funding because applicant checked “no RFP” yet had additional information that was not an RFP.
- There is a disconnect between Form 470 language and USAC intent that supplemental information be flagged for potential bidders.
- SECA recommends FCC grant the appeal since applicant answered the question on the Form 470 accurately.
- If FCC concludes that there should be an indication when supplemental information is available, applicants should be provided clear guidance going forward and language on Form 470 must be changed.

### **Pending FCC Appeals – Requirement of LOAs for Consultants** (FCC)

- SLD has denied funding requests because SLD concluded that the consultant did not have a LOA when advising the applicant.
- SLD bases its position at least in part on the document retention requirements found in paragraph 48 of the FCC's 5<sup>th</sup> Report and Order.
- What are the requirements for LOAs between the applicant and consultants?
- SECA believes that LOAs should only be required when a consultant signs forms. If USAC has concerns about a consultant's authority to speak for an applicant, it may request an LOA that can be created in response to that request with no penalty.

#### **Pending FCC Petitions – Equipment Disposal (FCC)**

- Current rules make it almost impossible for many applicants to dispose of obsolete E-rate funded equipment. Applicants may not dispose of equipment for anything of value, yet many states require school districts and other public entities to sell obsolete equipment. There is a petition pending with the FCC to clarify that applicants can sell obsolete equipment if they return the discounted share of non-*de minimis* sale proceeds.
- SECA strongly supported this petition in our comments filed December 18, 2006, but disagreed that any funds should be returned unless required by state and local laws.

#### **Pending FCC Petitions – State Master Contract Extensions (FCC)**

- A SECA petition filed September 29, 2006, proposed clarifying USAC's authority to approve service delivery deadline extensions (via Form 500) for non-recurring service FRNs requested through State Master Contracts being renewed within the funding year.
- Carrier comments supported extensions for recurring service FRNs as well.

#### **Implementing FCC Appeal Decisions – Contracts -- Adams County (FCC 07-35) (LECs, FCC)**

- Clarifies that 2 Signatures/2 Dates is not an FCC requirement.
- Thank you.
- Is there a new appeal window for denials related to 2 Signatures/2 Dates that opened with the Adams County decision?
- Will FCC defer to state and local definition of contracts in enforcement of contract requirement going forward?

#### **Implementing FCC Appeal Decisions – Alaska Gateway Decision (USAC)**

- When will SLD send notification to applicants about potentially late Forms 486 – before the 486 deadline or after?

- SECA believes that the Order directs SLD to issue such notifications after the deadline has passed.

**Implementing FCC Appeal Decisions -- Is USAC really getting the spirit of the FCC decisions?** (LECs, FCC)

- The Bishop Perry Order directed SLD to issue reminder letters for Form 471 for applicants who missed the filing deadline.
- SLD issued letters 20 days before close of the filing window, when the vast majority of applicants were still working on their Forms 471. This created mass confusion.
- What did the FCC intend the triggers to be for the reminder letter? Sending letters only to 470 applicants will miss many who would be 471 applicants, due to multi-year contracts and 470s filed by consortia.
- We urge the FCC to review carefully any new procedures proposed by SLD to implement GROs.
- What expectations does FCC have coming out of the GROs? For example, fewer denials, fewer appeals, etc?
- We urge that the FCC review and evaluate the outcome of the implementation of the new guidance in the GROs to ensure that its expectations are being met.

**Miscellaneous -- USAC Appeal Procedure – Considering New Information** (LECs, USAC, FCC)

Under USAC's current procedures, it will generally not allow new information on appeal. USAC should accept new information on appeal unless it is inconsistent with information provided earlier.

- This would ensure funding for deserving applicants.
- It would be consistent with Bishop Perry and other GROs.
- This would reduce appeals to the FCC.
- In our conversations with USAC on Monday, USAC indicated that they would begin allowing new information on appeal, and would provide guidance on their web site.

**Miscellaneous -- Online BEAR** (LECs, USAC)

- The way the system works today there are problems which prevent effective use of online BEARs.
- Many service providers are inadvertently rejecting BEARs because of the way they must be certified.
- The applicant PINs for BEARs mean that only the ultimate signer can do data entry of the BEAR.
- State Coordinators cannot review BEARs in process for applicants.
- The online BEAR should be modeled on the 471.

**Miscellaneous – Applicants identifying correct SPINs (LECs)**

- LECs – Applicants need an easy reliable source for correct SPINs.

**Miscellaneous – Applicant 90 Day Payment Requirement (LECs)**

- SLD had been denying invoices if they found the applicant had not paid the service provider within 90 days.
- Has this been corrected?

**Online 470 Availability (LECs, USAC)**

- There must always be availability of an online 470.
- States, consortia, and many large school districts have long procurement cycles and should not be restrained from starting the process by the absence of an online 470.
- At close of the 471 filing window, the online 470 should remain available with the funding year advanced by one.
- Program rules require that applicants can file outside the window, so online 470s should be available at all times.

**ESL Timing (FCC)**

- SECA urges the FCC to issue the Draft Eligible Services List for public comment immediately upon receipt from USAC and to release the final Eligible Services List no later than September 1.
- This is critical for training purposes and so that applicants have the information they need to prepare tech plans and Forms 470.

**Unused E-Rate Funds (FCC)**

- It appears that there is a sizeable amount of unused funds from prior funding years (\$350 million or more) and that USAC is leaving hundreds of millions of dollars unused in FYs 2005 and 2006.
- Is there a plan to reserve these funds? If so, for what purpose? If not, why not roll over the prior-year funds into FY 2007 and lower the funding threshold for FY 2006 to 83%.