



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

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

**FURTHER COMMENTS ON THE ADMINISTRATIVE PROCEDURES OF THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
SCHOOLS AND LIBRARIES PROGRAM**

On November 8, 2007, the State E-Rate Coordinators’ Alliance (“SECA”) submitted comments to the Commission regarding the list of current USAC administrative procedures under the Schools and Libraries Universal Service Support Mechanism that had been submitted by USAC on October 31, 2007, as required by the FCC’s Fifth Report and Order (FCC 04-190).

At this time, SECA is submitting further comments on a new administrative procedure that was apparently initiated for FY 2007 consortium application reviews, but which was not addressed in USAC’s October 31st administrative procedures filing. Since the Commission may currently be reviewing proposed USAC administrative procedures for FY 2008 E-rate application review, which may include the same consortium procedure, we ask that SECA’s further comments be considered in the Commission’s deliberations.

Linking of Consortium and Member Application Reviews:

Late in 2007, SECA began hearing from a number of consortium applicants who had not yet been funded for FY 2007, who reported that they had not received any additional PIA inquires in months, but whose applications — including statewide network applications — had not yet been funded. When they called the SLD’s Client Service Bureau to inquire, all they were being told was that their applications were in “Initial Review.”

The more persistent consortium applicants, including a few who pursued the issue with the SLD’s Ombudsman’s office, found that this was not exactly the case. Their consortium funding was apparently being held up pending resolution of Selective Reviews — not of their own applications, but of the individual applications of a few members of their consortiums. It was apparently not unusual that a funding decision on a consortium application of a hundred or more members was being deferred as the result of Selective Review of a separate application filed by one of the consortium’s members. To SECA’s knowledge, FY 2007 was the first time that the SLD had established a general procedure linking funding decisions on consortium and member application reviews.

SECA believes that a policy of deferring action on consortium applications pending outcomes of Selective Reviews of member applications is both unfair and impractical.

On the fairness issue, we have two concerns. The first is procedural and could be easily fixed. It is that the current procedures do not include notification to consortium applicants that their applications are being held due to the Selective Reviews of member applications — essentially circumstances beyond the control of the consortia. Not only is this notification not proffered as a courtesy to the affected consortia, but any consortium applicant calling the SLD’s Client Service Bureau has been given the misleading information that their application is still under review. While perhaps technically correct, this answer is at a minimum disingenuous.

The larger concern is that funding for the consortia and their many members are being delayed, typically for extended periods, until the Selective Reviews are resolved.¹ Since consortium applications normally involve larger funding requests, these delays can create major financial problems, if not the actual deferral of services, for many schools and libraries.² A procedure that negatively impacts large consortia is not only unfair, but is at odds with Commission precedent set with regard to Letters of Agency (“LOAs”) in its *Project Interconnect* decision (DA 01-1620) that concluded:

¹ As a side issue, SECA notes that the Selective Review resolution process appears flawed. The SLD is apparently initiating more Selective Reviews than it is staffed to handle on a timely basis. We hear constant complaints from applicants undergoing Selective Reviews that their initial responses lay dormant for months on end, only then to be pressured for quick responses to follow up inquiries which again do not lead to Selective Review resolutions.

² SECA notes that the new consortium review procedure may be a significant cause of the FY 2007 funding delays. As of the end of February 2008, awarded funding is only 68% of the \$2.9 billion FY 2007 cap (including roll-over funds) — a shortfall of almost \$1 billion. By way of comparison, by the end of February 2007, awarded funding for FY 2006 was 80% of last year’s \$2.25 billion cap. Although absolutely more funding has been awarded so far for FY 2007, pending funding is substantially higher than in recent years.

“...that to deny the entire application under these circumstances would unfairly penalize the entire consortium where only a few members of the consortium failed to produce the requested documentation. Further, it would tend to make applicants reluctant to risk applying as consortia, in contravention to the Commission’s stated desire to “encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower rates”

On the practical side, we have another two concerns. The first is the added complexity of dealing with a consortium which, in one way or the other, has discovered that decisions on its application(s) are being held up pending a member Selective Review. When requested — or maybe “pressured” is the right word — by such a consortium, the SLD has been willing to make special accommodations. In order of increasing complexity, these include:

- If the consortium has multiple applications, including some that do not involve the targeted member(s), the SLD will proceed to issue Funding Commitment Decision Letters (“FCDLs”) on the unaffected applications.
- If within a single application, there are multiple funding requests (“FRNs”) including some that do not involve the targeted member(s), the SLD is willing to issue an FCDL that includes funding for the unaffected FRNs, but defers funding on the others (treating them as still “Under Review”).
- If a specific FRN encompasses services for both the targeted member(s) and others, the SLD will consider a request to split the FRN into two requests, one for the targeted member(s) and one for all the rest. Once split, an FCDL could be issued funding one FRN, but deferring funding on the other.

The split FRN process, in particular, creates additional work for both the consortium applicant and the SLD. This is perhaps one reason that the SLD, as a general rule, has not notified consortium applicants as to why funding decisions on their applications have been delayed.

A second and more important concern is that we have seen no concrete procedure for dealing with affected consortium applications should one or more members fail Selective Reviews on their own applications. Conceptually, we have been given an indication that the treatment of the consortium applications will depend upon “why” the Selective Reviews failed. Since the primary focus of Selective Reviews deals with procurement practices and resources, we postulate that the SLD may be thinking as follows:

- If a member’s procurement practices were found to be deficient, but the member had no involvement in consortium’s procurement of services, there would be no adverse impact on funding of the consortium application.
- If, on the other hand, the member could not demonstrate that it had adequate resources to take advantage of the services for which it had applied under its own application(s), then perhaps it would be equally true that the applicant did not have resources to effectively use the consortium services. In this case, the SLD may consider requiring the consortium to remove the member from its application and to reduce the funding accordingly.

Although SECA acknowledges the theoretical basis of the latter argument, it notes that most consortium applications involve broadly used and needed services for which individual member resources should not be a significant issue.³ In many cases, the consortium itself is providing the backup financial and technical resources supporting its members' use of the services.

From a more practical standpoint, any actions taken to require consortium application revisions based on perceived failings of a member, are likely to create more problems than they solve. Consider, as just one example, appeals. If a member appeals a Selective Review denial of its own application(s), resulting in that member's removal from the consortium, the consortium may have a fiduciary responsibility to appeal as well.

Conclusions:

SECA is unaware of any instances of waste, fraud, and abuse resulting from the inclusion in a consortium of a single member that might have failed a Selective Review. The SLD appears to have established a new application review procedure with a significant downside, but with little or no practical benefits. We urge the Commission to review the need for and the continuance of this review procedure for FY 2008 consortium applications

If this consortium application review procedure is to be retained, we urge the Commission to require the SLD to notify consortia whenever decisions on their applications are being linked to those involving member applications so as to permit the consortia to take corrective action on behalf of the rest of their members.⁴

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Respectfully submitted:

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³ In some cases, the targeted member may not even be a direct recipient of services. The Block 4 of a statewide consortium application for backbone services between network nodes, for example, would list every downstream entity using the state network. This could involve hundreds of entities. Under the current procedures, a Selective Review of any one of those entities, which are in no-way financially responsible for paying for the backbone services, would delay funding for the entire backbone application.

⁴ Another way in which the Commission could minimize delays in funding consortium applications under these situations is to limit the SLD's initiation of individual applicant Selective Reviews to a number for which the SLD has sufficient staff resources to complete processing on a timely and efficient basis.