

Federal Communications Commission  
Washington, DC

Schools and Libraries Universal Service :  
Support Mechanism :  
: CC Docket No. 02-6  
Consolidated Appeals by Connect2 Network, :  
Inc. of Fund Recovery Decisions of :  
The Universal Service Administrator :

## **REPLY COMMENTS OF THE STATE E-RATE COORDINATORS ALLIANCE**

### **I. Introduction and Background**

The State E-rate Coordinators Alliance (SECA) submits these Reply Comments in response to the January 21, 2005 Public Notice issued by the Wireline Competition Bureau at DA 05-146. The Public Notice invites interested parties to file Comments and Reply Comments regarding the appeals filed by Connect2 Internet Network, Inc. (Connect2) of several decisions of the Universal Service Administrative Company (USAC) seeking recovery of funds previously disbursed to Connect2.

SECA members comprise the state E-rate coordinators responsible for disseminating programmatic information to E-rate applicants and other stakeholders in their respective states. SECA members are intimately familiar with the operational details of the E-rate program as they are called upon to respond to applicants' questions on a daily basis and to facilitate applicants' participation in the program. By serving in the field, SECA members are very aware of the impact of FCC rules and procedures on E-rate applicants.

Based on a review of the Commission's docket in this proceeding, SECA observes that Greg Weisiger is a party who has filed Comments in response to the Public Notice. SECA salutes Mr. Weisiger's efforts and agrees with the gist of his Comments. As Mr. Weisiger noted, every E-rate stakeholder, including Connect2 notwithstanding its criminal conduct, must be provided with sufficient procedural protections to assure that they receive timely actual notice of actions of the Universal Service Administrator, and to have the opportunity to appeal those decisions on a timely basis to the FCC.

**II. Revised Funding Commitment Decisions Letters Which Seek to Recover Improperly Disbursed Funds Must Be Sent to Parties Using A Delivery Mode That is Capable of Verifying Receipt.**

Given the importance and gravity of a decision of the universal service administrator to seek recovery of improperly disbursed funds, it is essential that the administrator use a means of delivery, such as certified mail – return receipt requested, or a means of verifying that the administrator's correspondence has been received by the intended recipient. As Weisiger pointed out in his comments, this is not the first time that a party has alleged that it did not receive a Commitment Adjustment (COMAD) letter, and without absolute proof of a delivery confirmation, the FCC should presume that the letter was not received. Indeed, this procedure would conform with the FCC's own procedures of sending notices of suspension and initiation of debarment proceedings via certified mail.<sup>1</sup>

**III. The Amount of Recovery of Funds that USAC Pursues Should Not Exceed the Total Amount of Funds Improperly Disbursed.**

It makes sense that criminal restitution payments that Connect2 has been required to make should be paid to USAC as part of the recovery of improperly disbursed funds. Restitution payments are made in order to make reparations for wrongdoing -- in this case, the commission of fraud against the E-rate program. On the other hand, the imposition of criminal fines is a means of penalizing the criminal conduct – the act of defrauding the E-rate program – and those payments typically are remitted to the United States Treasury<sup>2</sup>. Consequently, SECA submits, if Connect2 has remitted restitution payments, those payments should be credited to USAC – as the victim of the crime. In a situation where the service provider is the target of having to repay improperly disbursed funds, the amount of restitution payments should be credited against the amount that the service provider -- Connect2 -- must repay to E-rate.<sup>3</sup> Criminal fines and penalties, however, should not be counted toward satisfying Connect2's obligation to repay improperly disbursed funds to USAC. As aptly noted by Weisiger, the FCC must be the debt

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<sup>1</sup> See, e.g., Notice of Suspension and of Proposed Debarment, DA-05-607 (March 8, 2005). This notice was mailed via certified mail, return receipt requested.

<sup>2</sup> If lawfully possible, the amount of fines paid should also be remitted to the E-rate fund.

<sup>3</sup> In other situations where USAC may pursue repayment of improperly disbursed funds from both an applicant and service provider, it may be appropriate to credit the applicant with the service provider's repayment of restitution. For example, where an applicant has uncovered and reported wrongdoing by a service provider, the applicant may properly receive credit for the amount of the restitution payment made by the service provider.

collector of last resort for improperly disbursed E-rate funds, and USAC should not be permitted more than 100% of the improperly disbursed funds.

#### **IV. Conclusion**

SECA respectfully requests the FCC to adopt an Order consistent with the Reply Comments set forth above.

Respectfully submitted,

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