

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
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	

**REPLIES TO COMMENTS OF STATE E-RATE COORDINATORS ALLIANCE
IN RESPONSE TO
E-RATE BROADBAND NOTICE OF PROPOSED RULEMAKING (FCC 10-83)
ELIGIBLE SERVICES LIST FURTHER NOTICE OF PROPOSED RULEMAKING (FCC 09-105)
AND ON E-RATE DRAFT ELIGIBLE SERVICES LIST FOR FUNDING YEAR 2011 (DA 10-1045)**

I. Introduction

The State E-rate Coordinators' Alliance (SECA) submits these consolidated Replies to Initial Comments in response to the FCC's Notice of Proposed Rulemaking (rel. May 20, 2010 (FCC 10-83) ("E-rate Broadband NPRM") seeking comment on various proposals for "[u]pgrading the E-rate program" as part of comprehensive Universal Service reform that is called for in the National Broadband Plan; the Eligible Services List Further Notice of Proposed Rulemaking (FCC 09-105) (rel. December 2, 2009) ("ESL FNPRM") and the FY 2011 Draft Eligible Services List (DA 10-1045)(rel. June 9, 2010)("FY 2011 Draft ESL").

II. Summary of Comments

SECA's Replies to Comments address the following subjects:

- Simple average discount calculation for school districts

- Income survey extrapolation
- Wireless services outside of school
- Eligibility of dark fiber service
- Ineligibility of seb hosting
- Access to P2 funding and ineligibility of basic maintenance of internal connections
- Continued eligibility for basic phone service
- Time frame for implementation of proposed reform proposals

III. The Simple Average Discount Method For School Districts Will Simplify The Form 471 Application and Provides A Fairer Manner For Allocating E-rate Funds.

Of the 27 interested parties that addressed the FCC's proposed simple average discount calculation for school districts, twenty (20) parties, or 74%, support the concept of using a district-wide simple average of students eligible for free and reduced lunch as a means of determining eligibility. Among these commenters in favor of the adoption of a simple average were the states of Alaska, California, Michigan, North Carolina, Utah and Wisconsin.¹ No state agency opposed this proposal although there were conditions to the approvals offered by the State of New York and New York City Department of Education that are consistent with SECA's Initial Comments.

First, the New York State Education Department supports moving to the simple average discount provided that Block 4 of the form 471 application is amended to eliminate the collection of enrollment and NSLP information on a building-by-building basis:

Requiring only a total enrollment number and a count of total eligible students to calculate a district's discount rate would greatly streamline and simplify preparation of Block 4 of the Form 471 application — if that was the only information requested. It would be a major benefit for large school districts such as New York City that has 1,500 schools, often co-located in buildings and reorganized throughout the year.

¹ Alaska Department Of Education And Early Development, Including The Alaska State Library Initial Comments, pp. 6-7; California Department of Education Initial Comments, pp. 8-9; Michigan Department of Education Initial Comments, pp. 2-3; North Carolina Department of Public Instruction Initial Comments, pp. 2-3; Utah Education Network Initial Comments, pp. 5-6;

SECA fully concurs and urges that the conversion to the simple average calculation be accompanied by this significant modification to the form 471 application so as to require the collection of the district wide number of enrolled and NSLP eligible students and no longer require this information per building. This change is critically important to insure that the full benefit of streamlining will be experienced by applicants and the administrator alike. The administrator would be required to validate the school district wide discount by referring to the official state NSLP file and compute the simple discount for the district based on the aggregate data in that file for the district. Should the simple average discount shown on the applicant's form 471 be different from the discount validated in the state file, then just like today's PIA procedures, SLD would contact the applicant and ask them for data to substantiate the discount as shown on the form 471 application.²

The Pittsburgh School District explained the inherent problem associated with trying to list individual building data on the Block 4:

Although the Pittsburgh School District's P1 discount would decline from 82% to 80%, we support the easier discount calculations, particularly if it means that individual school buildings will not have to be listed on the Block 4. The added burden of listing these entities is not the problem, rather, it is the problem that all large, urban districts face when school buildings are opened and closed in mid-year, when buildings are repurposed from schools to administrative facilities, when buildings share students, or when students only attend class in a building for one class/day. It is unrealistic to believe that large school districts are static entities that only use buildings for a single purpose for the entire year. And there are currently no procedures in place to allow for such changes after the Form 471 is filed.³

SECA fully agrees with the Pittsburgh School District. While the original purpose of Block 4 was limited to setting forth the information underlying the calculation of an applicant's E-rate discount, a second implicit purpose arose later to identify all buildings that are recipients of service.

² The Block 4 section of the form could continue to request applicants to advise whether the discount calculation relied on alternative discount calculation information, if the FCC and E-rate administrator thought this information would be helpful.

³ Pittsburgh Public Schools Initial Comments at page 3.

The Block 4's dual purpose of discount calculation and recipient of service identification has led to a nearly impossible task for applicants with large Block 4 entries. Administrative authorities are just that -- institutions with the authority to apply for funding on behalf of all of the entities under their jurisdiction. SECA submits, and we believe all applicants - both large and small -- would agree that there should be an overarching presumption that all buildings under an administrative authority's jurisdiction are considered eligible.

Second, the New York City Department of Education gave its unconditional support for the simple average discount method for priority 1 funding requests. This organization's support for using this methodology for priority 2 funding requests, however, is conditioned on changing the manner for allocating priority 2 requests so as to insure that all funding discounts for priority 2 would be approved.⁴ Their point is well taken that using the simple average discount will potentially reduce districts' discounts to a lower matrix discount when the district is comprised of buildings that would otherwise have a range of E-rate discounts. For this reason, SECA proposed a new system of allocating priority 2 funding on a cyclical basis that would insure that all applicants, regardless of discount percentage, would be eligible to receive funding on a periodic basis. While this method does not guarantee that all funding requests in a given year will be funded, the process will enable all applicants to better plan their internal connections procurements and to be more confident that, provided they comply with program rules, they will be able to successfully receive E-rate priority 2 funding. SECA also proposed a revision to the discount matrix to reduce the maximum discount for priority 2 as another means of making more funding available to more applicants. These measures are fully consistent with and compliment the position set forth by the New York City Department of Education.

⁴ New York City Department of Education Initial Comments at page 3.

The eight parties that opposed the FCC’s proposal focused on the perceived disadvantage that large urban schools may experience. The Council for Great City Schools, its Miami Dade member and the Education Networks and Libraries Coalition (EdLiNC) suggest that large and county-wide districts with diverse poverty levels will be hurt.⁵ Given the potential for a loss of funds, the position taken by these parties is expected.

SECA’s intent in supporting the FCC proposal is not to penalize any group of applicants but rather to make the program more equitable for all applicants. This change will have a modest, if any, impact on a district’s priority one funding, since a district’s shared discount already should be reflective of all of the buildings in the district. As for priority two funding, requiring applicants to file at the administrative authority level rather than at the building level reflects the financial reality that school districts are the fiscal agent for all schools within their district and have tremendous flexibility to distribute their own resources to the schools that need them the most. Any potential disadvantage to large school districts is offset by both the 13-year history of benefits, the opportunity for these districts to qualify for funding for their non-90% schools, and the flexibility to spend those funds on their schools most in need.

The Michigan Department of Education best summed this up in this comment:

Although MDE understands there will be “winners and losers” in E-Rate, we believe a simple, district average is the fairest calculation. We recommend the following formula for calculation: total number of district students eligible for free and reduced lunch/total number of district students enrolled. This should simplify the process and resolve issues arising when calculating the discount.⁶

The Council for Great City Schools suggested a compromise that districts be given the choice of using the single average or continuing to use the present method. Allowing different

⁵ Council of Great City Schools Initial Comments, pp.5-6 ; Miami-Dade Public Schools Initial Comments, pp.5-6; EdLiNC Initial Comments, pp. 8-9.

⁶ Michigan Department of Education Initial Comments at page 2.

methodology options for different applicants, however, will create confusion and is counterproductive to achieving program simplification. This option also opens the door for applicants to game the system by continuing to apply for their highest discount buildings and maximizing the allocation of precious priority two funding. Moreover, given SECA's proposed priority two cyclical funding approach, all applicants regardless of discount percentage would have access to this funding. The potential reduction in school districts' discounts that might arise from the simple average discount method would be offset by the ability of these districts to access priority two funding for all of their school buildings.

Likewise, E-Rate Provider Services, LLC's observation that using the single average discount would cause all discounts to be an even percentage divisible by 10 (20, 40, 50, 60, etc) which might cause many "ties" when setting the cut-off for priority 2 funding is not a concern if SECA's priority two funding approach is adopted. SECA proposes a discount setting formula that starts with a constant of 20% for urban and 25% for rural and adds the applicant's NSLP percentage plus 15% to the constant to arrive at the applicant's priority two E-rate discount, up to a maximum 70% discount

For all of these reasons, SECA supports the implementation of the simple average discount calculation for districts, and the requirement that districts apply for both priority one and priority two funding using their district wide simple average discount. SECA further urges the FCC to make the corresponding changes to Block 4 of the form 471 to eliminate the collection of data at the building level and only at the district aggregate level in order to realize the full benefits of this streamlining proposal.

IV. The Income Survey Response Rate Should Be Increased to 75% As A Prerequisite To Be Able To Extrapolate The Results.

Although the subject of income surveys did not arise explicitly in the E-rate Broadband NPRM, based on its experience with assisting applicants gather and collect the information needed

for the form 471 application, SECA presents a recommendation concerning this important issue in order to insure that discounts are calculated as accurately as possible. Currently, the alternative discount mechanism guidance on the SLD web site, which is not codified in any FCC rule, allows for income surveys to be conducted to establish a family's level of need.⁷ The guidance also allows for projections to be made based on returned surveys, which is often referred to as extrapolation:

If a school has sent a survey to the households of all of its students, and if it receives a return rate of at least 50 percent of those questionnaires, it may use that data to project the percentage of eligibility for NSLP for all students in the school. For example, a school with 100 students sent a survey to the 100 households of those students, and 75 of those households returned the questionnaire. The school finds that the incomes of 25 of those 75 households are at or below the IEGs for NSLP. Consequently, 33 percent ($25 / 75 * 100$) of the students from those households can be counted as eligible for NSLP. The school may then project from that sample to conclude that 33 percent of the total enrollment, or 33 of the 100 students in the school, can be counted as eligible for NSLP.⁸

SECA is concerned about the potential manipulation of data that arise with the use of income surveys, if the survey results are extrapolated from a non-random sample. Such acts are not permitted by the SLD guidance but applicants may unknowingly or inadvertently violate this edict. It is difficult if not impossible for the SLD to insure that the survey is distributed and collected on a random basis. With the requirement of a return rate of only 50% to be able to extrapolate the results, applicants have a huge incentive to focus their efforts to achieve completed surveys from families that may be known to have a financial need. This in turn could create a non-random sample as the basis for extrapolation. SECA believes that extrapolation should not be permitted at all, so as to alleviate these problems, or at the very least, the required response rate should be increased to 75% of the families as a prerequisite to extrapolation.

⁷ <http://www.universalservice.org/sl/applicants/step05/alternative-discount-mechanisms.aspx>.

⁸ *Id.*

V. Much Work Must Be Done Before E-rate Funding Can Be Made Available to Support the Laudable Policy Goal of Making Wireless Services Outside of School Available to Students.

SECA joins with most of the commenting parties in fully supporting the FCC's desire to facilitate achievement of this important goal of the National Broadband Plan. But unlike the parties that offered unconditional support for this expansion of the E-rate program, SECA cannot in good conscience support the use of scarce E-rate funding to achieve this goal.

The E-rate program by definition recognizes that it cannot fund all aspects of schools' and libraries' technology services and equipment.⁹ This initiative would reflect a huge expansion beyond any current interpretation of qualifying services and locations of E-rate eligible services. Once this Pandora's Box is opened, it may be impossible to contain this ruling and the totality of the E-rate program could be turned on its proverbial head.

As defined by statute, the only entities eligible for discounted services are elementary schools, secondary schools, and libraries. 47 U.S.C. §254(h)(1)(B). The service must be used for educational purposes. *Id.* In 2003, when the scope of "educational purposes" was clarified to include all "activities that occur in a library or classroom or on library or school property[.]" the FCC made clear that the services had to be used on the grounds of schools and libraries except for certain limited instances, such as for library staff person's use of wireless telecommunications service on a library's mobile library unit van, and the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event.¹⁰ Indeed, auditors and the SLD have adopted the general rule that school and library personnel usage of cell phones and wireless broadband access services funded by E-rate must take

⁹ The regulations and form certifications institutionalize these limitations by requiring applicants to certify that they have other resources for training and staff development, equipment, software and maintenance that are ineligible for discounts.

¹⁰ Second Report and Order in CC Docket No. 02-6, FCC 03-101 (rel. April 30, 2003) at ¶¶ 17-21, n.25.

place on school or library property. Even the recent *Community Use* Order that SECA and other stakeholders universally embrace focuses on the use of services during off-school hours *within* eligible schools and libraries.¹¹

By potentially expanding program funds to cover students' access to the Internet outside of school grounds, the potential number of beneficiaries grows exponentially. This change alone could cause such a huge increase in demand that not only would there be no money for priority two funding; there may not be enough funding to cover all priority one requests.

None of the supporting parties presented any information or quantification of the inevitable growth in demand for program funding arising from this proposed expansion to the Eligible Services List. Undoubtedly, if this proposed expansion were approved, there most certainly would be a significant increase on funding demand, as the FCC itself noted in the NRPM. There is no offsetting savings that would arise from this initiative since by definition students' wireless access outside of school is not currently funded and would be a *new* service. The uncertainty of the financial impact of such a proposal in fact prompted the FCC to ask whether the service should be made available initially on a limited trial basis.

Notably, neither the National Broadband Plan goal nor the E-rate Broadband NPRM specified whether students of all ages and grades should be included or whether only students of a certain age and/or grade would qualify. The National Broadband Plan mentioned students but did not specifically define the term. It is useful, therefore, to consider the financial implications of making funding available to all students, or a subset of grades and ages, and financial needs.

The following chart reflects SECA's estimates of the potential impact to the E-rate program of this initiative, based on schools' current participation levels in E-rate and vividly demonstrates

¹¹ Order and Notice of Proposed Rulemaking, CC Docket No. 02-6, FCC 10-33 (rel. February 19, 2010).

that this proposal could bankrupt the E-rate program even if a modest discount of 20% was offered.

The 50% discount scenario is provided as another option.

Annual Financial Impact	All Elementary and Secondary Students	Secondary School Students (Grades 9-12)	All Elementary and Secondary NSLP Students	NSLP Secondary School Students (Grades 9-12)
Total # Students	53 M	16.1 M	30.5 M	7.9 M
E-rate Participating Students	43.8 M	13.1 M	25.3 M	6.6 M
Annual Charge per Student (Prediscount)	\$480	\$480	\$480	\$480
Prediscount Amount	\$21 B	\$6.3 B	\$12.1 B	\$3.1 B
20% Discount	\$4.2 B	\$1.3 B	\$2.4 B	\$0.6 B
50% Discount	\$10.5 B	\$3.2 B	\$6.1 B	\$1.6 B

Explanation of Data Sources and Calculations:

Number of All Elementary and Secondary School Students: According to NCES, there are about 49 million elementary and secondary students enrolled in public schools and 5 million K-12 students enrolled in nonpublic schools during the 2008-2009 school year.

<http://nces.ed.gov/pubs2010/2010345.pdf>, Table 3 (public school students);

<http://nces.ed.gov/surveys/pss/tables0708.asp> (Table 2008-15) for nonpublic students.

Number of Secondary School Students (Grades 9-12): 16 million public students and 1.3 million nonpublic school students in grades 9 – 12.

http://nces.ed.gov/programs/digest/d09/tables/dt09_055.asp?referrer=list

All Elementary and Secondary NSLP Students: 30.5 million students served NSLP in 2008 (most recent data available). <http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf>

NSLP Secondary School Students (Grades 9-12): Approximately 26% of students served in NSLP were 14-18 years of age in 2001. This is the most recent available data SECA could find.

<http://www.ers.usda.gov/Publications/ERR61/ERR61.pdf>, page 11.

E-rate Participating Students: Based on 2005 data (most recent available data), GAO found that 83% of public schools and 63% of private schools participate in the E-rate program. GAO-09-253, FCC’s E-rate Program at p. 29 (March, 2009). It can be extrapolated that the total universe of potential students who could qualify for Internet access support outside of school is least 83% of

the nation's public school students and 63% of nonpublic school students. While the percentage of the participating public schools is 83%, they very well could represent *at least* if not more than 83% of the nation's K-12 student population—since all of the largest school districts in the country participate in E-rate. These percentages were then multiplied by the relevant data in each of the above listed categories to arrive at the number of E-rate participating students in each group. For example, to calculate the number of E-rate Participating Students in the “All Elementary and Secondary School Students” category, the following formula was used: Multiply E-rate participation rates by the total number of students in the public school and nonpublic school categories and add the numbers together, and the total is 43,820,000 students. $(49 \text{ M} \times 83\%) + (5 \text{ M} \times 63\%)$.

Annual Charge for Student: Conservative estimate based on SECA's collective knowledge and expertise that the recurring service charge for aircard service is \$40 per month, or \$480 per year.

All of these different scenarios that attempt to quantify the potential impact on funding demand make clear that the inclusion of this initiative within the E-rate program is simply not feasible unless there is additional funding made available above and beyond the annual cap of \$2.25 billion as adjusted for inflation.

Numerous states have experience with 1:1 learning programs and the FCC should consider this valuable information before moving forward, and issue a Notice of Inquiry and conduct workshops on this subject. The FCC must also consider whether the E-rate program is the appropriate source of funding for this effort, or whether the funds should be made available from the low income program. Also, parties have raised important competitive neutrality concerns, suggesting that all technologies – not just wireless – should be considered.

Two parties have offered reasonable alternative suggestions that SECA encourages the FCC to consider if the FCC wants to act on an interim basis while this matter is further deliberated. Two different Pennsylvania applicants, a public educational service agency that serves 12 school districts in Pennsylvania, and the Pittsburgh School District, a large urban district, both submitted comments suggesting that a far less costly option would be to allow applicants to extend their networks through wireless to allow economically disadvantaged students to access them from

home.¹² By mounting external antennas on school buildings, the schools could become WIFI hotspots to serve students in the immediately surrounding areas. The service coverage of the network could be extended by also mounting antennas on towers. As Chester County Intermediate Unit noted, "This proposal would have no financial impact on the E-rate fund but would provide districts with permission to use their excess bandwidth after school hours. Districts would be responsible for ensuring that district-supplied laptops could only access the district's network." The Intermediate Unit also provided a detailed explanation of how this wireless access could be made extremely secure so the only laptops that would have access to the district's network would be district-encrypted devices.

Pittsburgh School District noted that it has promoted the antenna proposal to FCC and USAC officials whenever they have visited the District in the past 10 years. The District suggests that the associated costs of the antennas would ideally be paid for by E-rate, and even so, this proposal would be far less expensive than the wireless broadband concept described in the E-rate Broadband NPRM:

The District believes that for many urban districts, the goal of this proposal could be met with little or no impact on the Fund. The Pittsburgh School District would very much like the opportunity to install antennae on the top of elementary schools which would provide wireless Internet access to students' homes in that general vicinity. We have no intention of becoming an Internet Service Provider or providing Internet to any computers or mobile devices that are not District owned. The connection would be through a highly secure network infrastructure which would ensure that only District-owned computers could be used to access the network. Ideally, E-Rate funding would support the construction of this environment which would basically be an extension of the already existing inner-school network (LAN). Because the District would not seek additional bandwidth over and above what it uses for the traditional 8 - 4 school day, there would not be any impact on the Fund from a standard telecom or Internet access service. Should the Commission wish to pilot this idea, the Pittsburgh School District would very much like to be a pilot school and provide real-life feedback to the FCC throughout the process so that the concept could be replicated to other urban districts.

¹² Chester County Intermediate Unit Initial Comments at p. 4; Pittsburgh School District Initial Comments at p. 4.

These proposals are a much more cost-effective approach, are a natural extension of the recent *Community Use Order*, and may allow the FCC to achieve the National Broadband Plan's goal without causing damage to the existing E-rate program. We encourage the FCC to give serious consideration to adopting this approach as the best solution.

VI. Dark Fiber Service Should Be Eligible.

The parties' initial comments make clear that the telecommunications industry as a whole is concerned about expanded availability of fiber infrastructure from non-telecommunications carriers. With the exception of Sprint Nextel Corporation, the industry's comments on this proposal echo, by and large, one common theme as summed up in AT&T Comments: "Even if the cost for accessing dark fiber or spare capacity is low to begin with, the ultimate cost of providing the requisite broadband functionality likely would be higher in the long run because the institutions leasing that capacity may, and likely will, lack the facilities, experience and personnel necessary to provide and maintain a complete broadband service efficiently."¹³

While SECA is encouraged by the acknowledgement that accessing dark fiber or spare capacity 'may be low to begin with,' we are equally as discouraged by the common sentiment summed up in AT&T's Comments, that "the institutions leasing dark fiber capacity lack the knowledge and experience to provide and maintain a complete broadband service efficiently." Our discouragement stems from what appears to be a fundamental misconception by the industry, that increased availability of fiber infrastructure may lead to inefficiencies or lack of performance characteristics equal to incumbents' service offerings, both regulated and unregulated. All of these factors are non-issues in the opinion of SECA.

¹³ AT&T Initial Comments at p. 12.

The combined Initial Comments of Educause, Internet2, National LambdaRail and The Quilt (collectively “R&E Network Community”) provide detailed information about the breadth of knowledge and experience of many existing dark fiber network providers that are not classified as telecommunications common carriers. These entities certainly stand in stark contrast to the depiction provided by opposing parties. In addition, in many parts of rural America where incumbent carriers have failed to deploy broadband, non telecommunications carriers have been leasing fiber to schools and libraries for years with exceptional service delivery. The only difference in the service offerings is that one service is E-rate eligible and the other is (currently) not.

The level of dark fiber leasing and support by applicants will necessarily align with the scope of the individual applicant’s network or project. Individual school applicants are likely to pursue short haul community level fiber access for their particular needs. Similarly, a district is not likely to see their boards approve long haul fiber construction initiatives but they will certainly be able to accurately define the scope of their needs, and determine what they can support in their respective budgets during a competitive bid process. State and regional networks are more likely to include and define on a grander scale the broadband landscape that they serve, at the community level, the state level, and often the national and global level. There are numerous examples across the nation of successful and viable community, municipal, and state networks that are providing fiber infrastructure and/or broadband services to schools, libraries, and the public. Within SECA itself are representatives with intimate knowledge of the benefits that these cooperative arrangements bring to the communities we serve.

Incumbents for the most part should also benefit from expansion of “greenfield” fiber construction/investment by an expanded array of investors. In light of the current evidence, we would expect greater access to more fiber infrastructure to promote more access to the services making up the lion’s share of incumbents’ current offerings as well as provide infrastructure that

incumbents themselves may need to expand the number and frequency of wireless nodes, if we're to truly pursue ubiquitous broadband. We encourage the FCC to enable leasing of dark fiber, lit or unlit, from any provider when it is the most cost-effective. We will all benefit from this action.

SECA believes that the National Broadband Plan made clear that expanding broadband capabilities is essential to our nation's future and will impact every sector of our economy. The evidence before us now only serves to reinforce this concept. Expanding support for leased fiber will undeniably lead to more fiber infrastructure availability for any entity working to expand broadband access or provide services via broadband to the Americans they serve, making available the innovations and leaps in efficiency that have so defined the recent era. We can expect these leaps will continue to occur and develop even more rapidly in a robust and ubiquitous broadband environment.

SECA is encouraged by Sprint Nextel's statement "Sprint cautiously supports the grant of E-rate funding for dark fiber used for telecommunications services only if the dark fiber is leased from a municipality or other community or anchor institution (NPRM, para. 52), but not when leased from commercial entities that are not telecommunications carriers." Their position indicates a unique vision among incumbents and is to be applauded. However, we do not agree with their suggested limitation of leasing of dark fiber from only public, non-profit, or incumbent telecommunications providers.

VII. Web Hosting Should Be Ineligible Because The Vast Amount Of These Charges Are For Content And Applications Which Are Not Eligible For E-rate.

While the web hosting vendors mounted an ambitious write-in campaign by their customers to urge the FCC to continue allowing web hosting to be eligible, their one-issue approach

failed to inform applicants of the other potential changes that the FCC was considering. As the Bethel Park School District explained¹⁴ in urging the FCC to consider various competing priorities:

Because of the current way in which E-rate funds priority two discounts, our district's technology resources and budgets must be comprised solely of non-E-rate funds which puts us at a disadvantage compared to districts that have been able to repeatedly apply for and receive priority two funding during the past thirteen (13) years. We have been unable to refresh our technology as frequently as those higher discounts applicants that have access to priority two funding.

Against this backdrop, we have carefully considered the FCC's proposal to eliminate the E-rate eligibility of web hosting services. Web hosting currently is a priority one service that our district is able to obtain support for from E-rate. At first blush, therefore, the proposed elimination of this service is very unappealing and would impose an even bigger budget burden on the District to find another resource to pay for this service. *So, if all other things remained the same, and no other changes were proposed to the E-rate program, there is no question that our District would unequivocally oppose this change.*

We have learned, however, that the FCC is also considering many other changes to the program including expanding access to priority two funding to more applicants. *If these changes meant that our district would be able to obtain guaranteed access to funding for priority two services and/or equipment on a periodic basis (subject to proving compliance with program rules), this change would be a higher priority for our district to support – even if it meant that web hosting service would no longer be eligible.*

We suspect that many other applicants may be aware that the FCC is considering doing away with the eligibility of web hosting but may be unaware of the FCC's other proposals to expand access to priority two funding. It is difficult if impossible to adopt a position on one issue without giving consideration to the other.

Our highest priority is to see the FCC reform the rules so our district and other similarly situated applicants would have the ability to apply for and receive funding of priority two equipment and/or services. If this reform does not occur, however, then our district opposes the elimination of web hosting services.

Our district also generally opposes any other modifications to the Eligible Services List that would create greater demand on E-rate funding, considering there is not enough money available to fund existing eligible services.

We recognize the FCC has to make some hard choices regarding how to allocate the limited E-rate dollars and hope our comments help provide a sense of our district's priorities.

SECA understands that in today's educational technology environment, E-rate applicants rely on their web sites to interact with the community, parents and students. The web site is a vital

¹⁴ Bethel Park Initial Comments at pp. 1-2 (Emphasis added).

resource for information. But one of the fundamental precepts of the program is that it does not fund content or application software. Given the hard choices that the FCC must make to balance competing priorities, SECA submits that web hosting service is one area that the FCC should exclude from program support. SECA disagrees with the sentiment that web hosting is as fundamental as other E-rate eligible services such as email.¹⁵ Unlike web hosting services, email, as well as Internet access and basic phone service are used to transmit and not create information. In contrast to the content creation vehicle that web hosting has become, E-rate support of email, Internet access and basic phone service support does not pay for the creation of any user content.

The purpose and use of web hosting, along with the associated costs, has considerably expanded in the years since the FCC has allowed web hosting to be eligible for E-rate as a separate charge that could be provided by a third party vendor other than the applicant's Internet Service provider.

Although web hosting vendors claim that only a modest amount of their annual fees are related to content and applications, the fees charged to the E-rate community are significantly greater than the web hosting charges that are available in other commercial markets. This point is what has driven SECA to advocate for the elimination of this category of service from eligibility. Only a modest amount of the web hosting fees should in fact be eligible and given the problems with cost allocations, it makes sense to simply eliminate its eligibility altogether. As Educational Networks, a vendor that provides web hosting services *and supports ineligibility of this service*, succinctly summed up the issues:

It may seem surprising for a web hosting provider that obtains E-rate funding to support the FCC's proposal for elimination of eligibility. However, it makes sense when viewed against today's requirements by schools for web hosting services. They are demanding a full set of features that goes well beyond the features that the FCC considers eligible. On the one hand, competition in the marketplace demands that service providers respond to the wants and needs of schools, but, on the other

¹⁵ EdLine and ePals, Inc. Initial Comments, p. 14.

hand, service providers have an incentive to seek the best possible cost allocation between eligible and ineligible portions. This inconsistency between the FCC's focus on basic access and the requirements demanded by applicants for feature-rich web hosting solutions creates distortions and skewed incentives.

...

The features provided by current web hosting services can include sophisticated content creation features. Web hosting services can include groupware calendars and software applets. Other full-featured software applications such as grading modules may be included or may be available at additional cost if the core service is obtained. Such feature-rich modules, while ineligible, are highly attractive to schools and influence their purchase decisions or what services to seek in the first place.¹⁶

Although some parties suggested that the FCC should revert back to the original conditions of eligibility, and allow web hosting to be eligible if bundled with Internet Access Service,¹⁷ this option is no longer feasible in today's market place. The web hosting industry has become a full blown separate service and is no longer routinely included as a bundled cost of Internet Access service.

The concern raised by parties about the adverse impact of this change on parties with multi-year contracts is well taken. This change, like all program changes, should be phased in so that parties have sufficient advance notice to be able to plan for the change and re-negotiate contracts as necessary. This change should not occur any earlier than FY 2012, but SECA prefers the change to take effect in 2013 so that adequate outreach and education can be undertaken and contract adjustments can be made

VIII. Access to P2 Funding and BMIC

Among the many parties' comments on these issues, there were a handful of specific proposals to reform the program and nearly unanimous support, including SECA's, for eliminating the current rule that restricts priority two funding to two out of five years. Similarly, SECA was among the majority of commenters that opposed a per student cap amount for priority two internal connections and/or basic maintenance of internal connections.

¹⁶ Educational Networks Initial Comments, pp. 1-2.

¹⁷ Verizon and Verizon Wireless Initial Comments, pp. 12-13 ; E-rate Service Providers Association, p. 2.

SECA is pleased to be part of a chorus of voices that support lowering the maximum discount for priority two funding. There was support for a reduction to 80% or the lower percentage of 70% as SECA advocated in initial comments. These parties all recognize that in order for all applicants to have access priority two funding, and with limited available resources of the \$2.25 billion adjusted for inflation, it was essential to spread the money further.

Many of the arguments opposing a discount matrix revision for priority two are alleviated by SECA's other related proposals concerning the process for applying for priority two as well as requiring all applicants to apply for priority two funding not on a building by building basis but rather by the administrative authority, and using the administrative authority's discount.

Some applicants stated that the reduction in the maximum discount would cause an adverse financial impact on high discount applicants. These same commenters argued that these large districts had also been unable to access priority two funding for buildings that had lower discounts. This concern is met under SECA's proposal to prescribe a schedule for priority two funding rotation of all discount levels. All buildings associated with an administrative authority would be able to obtain priority two funding – since the only relevant discount would be the administrative authority's discount. While the maximum discount for the entity may be reduced to 70%, the district as a whole would be able to qualify for E-rate discounts on all buildings, and not just those at the 90% discount level. Consequently, these proposals may have a financial advantage rather than disadvantage, when taken as a whole.

The formula approach for calculating discounts, by adding a constant to the applicant's NSLP percentage, would create a wide range of E-rate discounts that would be ideal for implementing the rotating cycle for applying for priority two funding. Unfortunately, proposals to flatten the matrix, while trying to streamline and simplify the program, would make it unmanageable to administer allocation of priority two funding – even under the current process. There would be huge demand at each matrix discount level, and would require the administrator to

either roll over a large sum of money (which creates further inefficiencies) or partially fund a discount band which raises a whole other new set of equity and administrative issues.

While many applicant and vendor commenters opposed elimination of basic maintenance of internal connections, SECA was among numerous public interest parties that supported this change:

- California Department of Education
- Michigan Department of Education
- North Carolina Department of Public Instruction
- Utah Education Network
- West Virginia Department of Education
- Wisconsin Department of Public Instruction

Not one party disputes the importance of basic maintenance of educational technology. The problem with funding it through E-rate is that it has created a significant inefficiency by applicants having to agree to set amounts in advance of using the service, so that it can be quantified for E-rate purposes. Further, there has always been an inequity for those districts that employ personnel to maintain their equipment; the associated salary costs of these employees cannot be paid for by E-rate but if the applicant contracts with a third party, the third party's labor costs can be paid for by E-rate. By instead focusing on funding manufacturers' warranties on eligible internal connections, the FCC will allow applicants to receive break/fix protection on E-rate funded equipment without paying for the exorbitant basic maintenance costs that have swelled in recent years.

IX. Basic Phone Service Needs To Continue To Be Funded By E-rate.

While the FCC may want to adopt policies to facilitate broadband deployment, de-funding of basic phone service will not make this happen any sooner and may further penalize applicants that face obstacles obtaining more advanced telecommunications services.

School and library customers will naturally evolve to broadband services as the market continues to mature. It seems inherently unfair to fund broadband voice services for applicants that have elected to convert to a VOIP solution (and had the budget to pay for all of the new handsets which are not eligible for E-rate) but deny funding to applicants that have not yet made the switch to a VOIP service, or to a broadband voice service that is either too costly or not available in their area. Similarly, de-funding dial-up Internet when that is the only option available does not help this applicant obtain broadband service but simply further penalizes the applicant for not having a broadband option.

The NPRM implies that voice telephone services that are not broadband services could be eliminated from eligibility. There are numerous services such as VOIP that rely on broadband services and the same service also allows for data and Internet connectivity. Presumably these services would still be eligible for funding since they rely on a broadband platform. But what about services such as Centrex? Centrex and cell phone services are considered basic phone services that are exempt from the technology plan requirement so does that mean they would be deemed ineligible? Are voice T-1 lines considered broadband and therefore would continue to be supported by E-rate?

There also is no recognition that the funding of voice phone services allows applicants to use their savings for other technology expenditures. There is no dispute that voice phone service is an absolute necessity for schools and libraries, and constitutes a telecommunications service. The entire principle underlying the E-rate program has been to allow applicants to choose which services they want to receive. In 1997, when the First Report and Order in CC Docket No. 96-45 was adopted, it was true and it remains just as true today: “[A]llowing schools and libraries to choose the services for which they will receive discounts is most likely to maximize the value to

them of universal service support and to minimize inefficient uses of services.”¹⁸ Unless and until the FCC is assured that all applicants have options for broadband voice services, and has synchronized the rules of the E-rate program with the other USF programs, it is premature to consider eliminating or phasing out the eligibility of basic voice services. Further, school districts’ fragile budgets make this period in history a particularly awful time to eliminate funding for voice services.

X. The Time Line For Implementation Of Program Changes Should Be No Earlier Than FY 2012.

While SECA is pleased that the FCC wants to move promptly to implement streamlining changes to the E-rate program, SECA recommends that the FCC proceed to promptly adopt an Order in the fall of 2010 that announces changes that will take effect no earlier than 2012.

Experience has taught that whenever the FCC issues an order regarding E-rate program requirements, the administrator and interested stakeholders need sufficient time to comprehend the Order and communicate the news to applicants and service providers. Applicants then need sufficient time to digest and incorporate the updated information into their E-rate application planning. In particular, applicants need to know the eligibility status of services and equipment prior to completing their form 470 procurements and also need advance notification of any new information reporting requirements so they can begin the process of gathering the information.

In the fall of 2010, when the FCC is expected to issue the Order in this docket, however, many applicants will have already begun their E-rate application cycle for FY 2011 by posting form 470s and issuing requests for proposals. Some applicants with a particularly long procurement cycle may already sign contracts by the third or fourth quarter of 2010. It would be disruptive to issue an Order that would apply to the then pending application cycle because the new information is likely to create some initial confusion and uncertainty. Moreover, many of the changes that SECA

¹⁸ First Report and Order in CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997) at ¶1432.

and other parties are recommending and that the FCC may adopt will require data processing systems to be modified and/or new systems to be developed. The time frame for system changes requires months if not years of planning.

Because the program requires so much work to be done far ahead of the time period during which funding is provided, it may not seem logical at first blush to request what might be perceived as an implementation delay. But in order to have the new rules published well in advance and to provide stakeholders sufficient time to prepare for the new rules, it makes sense to announce the rule changes in the fall of 2010 and to delay implementation until at least FY 2012, which is the next full E-rate application cycle that will occur after the order is issued. Nothing is more disruptive than announcing new rules and not providing the administrator or stakeholders adequate time to plan for the operational implementation of the new requirements. Similarly, sufficient advance notice of changes in eligible services is necessary to allow for parties to consider the ramifications to their existing multi-year agreements.

XI. Conclusion

The State E-rate Coordinators Alliance respectfully requests the Commission to adopt an Order that accepts and approves the recommendations contained in the SECA Initial Comments and Replies to Initial Comments.

Respectfully submitted,

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