

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



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

**COMMENTS OF STATE E-RATE COORDINATORS ALLIANCE ON
REVISIONS TO FCC FORMS 470 AND 471 UNDER THE PAPERWORK REDUCTION ACT**

I. Introduction

The State E-rate Coordinators' Alliance (SECA) submits these Comments regarding revisions to Form 470 and Form 471 and associated instructions, in accordance with Public Notice DA 10-1248 released July 1, 2010; see also 60-Day PRA Notice for Collection 3060-0806, 75 Fed. Reg. 28,806 (May 24, 2010). The current forms expire in December of 2010.

The FCC has a set of complex timing issues regarding forms revisions that require thoughtful synchronization. In addition to considering changes to the expiring forms based on current program rules, there will need to be another series of forms revisions once the FCC issues an order in the pending E-rate Broadband NPRM proceeding. The FCC's National Broadband Plan implementation schedule anticipates there will be an Order issued in third quarter or early fourth quarter 2010 that will adopt program changes for FY 2011. But the forms revisions being considered now will not be able to incorporate any of those changes until after the Order is released. Then it will take, realistically, a few months to prepare another series of revisions, receive

public comment, finalize the revisions and obtain OMB approval. By this time, it will already be close to the beginning of, or possibly after, the July 1 commencement of FY 2011.

As a practical matter, in order to synchronize these timing issues, SECA strongly recommends that the FCC consider not making changes to the forms at this time and renewing the current forms. Given that the renewal forms are likely going to be in effect for a very short period of time, any changes to them create the very real possibility of causing confusion on the part of both applicants and service providers. This is especially true for any changes that are being contemplated for the Form 471 for FY 2011. Applicant training on new forms and new online systems will take at least 3-5 months and since the Form 471 revisions are much more substantive than the Form 470 changes, SECA especially recommends that any changes to the Form 471 be pushed back. , Such confusion would greatly undercut any benefit that might be attained from making improvements to the forms based on existing rules. The FCC then should initiate a new round of forms revisions to implement the changes arising from the forthcoming Order in the E-rate Broadband NPRM proceeding with the goal of obtaining OMB approval of the new forms not later than July 1, 2011, which is the beginning of the application cycle for FY 2012.

To the extent the FCC decides to move forward with making changes to the current forms, the following recommendations are based on the FCC's current program rules and apply specifically to the draft forms on which comments were invited.

II. Form 470

The basic framework of the original form 470, which has remained intact throughout the 13 year history of the program, was developed when the program requirements had first been enacted and prior to any experience by applicants, service providers and the Administrator in using the form. The current form has several meaningless items and collects unnecessary information that is not used in any way to protect against waste, fraud and abuse, and simply creates confusion,

grounds for denials and Commitment Adjustments (COMADs). SECA urges the FCC to simplify and redesign the form 470 as follows. All of these changes are permitted by current program rules such as 47 C.F.R. §54.504.

Block 1, Item 2, Eliminate Funding Year Designation: When an applicant posts a form 470, it may be for services that will begin in the next funding year. But it also may be for services that may begin before July 1 of the next year, as well as for services that begin after the funding year has ended (such as large regional or statewide procurements). The FY designation was implemented prior to the concept of the evergreen form 470, and is a misnomer that forces applicants to select the funding year designated on the most currently available version of the online form, which may or may not be an accurate statement. In reality, there should be no specific funding year form and applicants should be able to use the most currently available form, regardless of when it is posted throughout the year. For applicants of MTM services, SECA proposes that a form 470 posted after the application window closes will satisfy the posting requirement for the next funding year.

Block 1, Item 5b, Change Applicant Demographics to Recipients of Service

Demographics: Recipient of service more accurately captures the information that is to be provided here, especially because the instructions request that all applicable boxes should be checked.

Block 1, Item 7, Consultant Information: This information should be omitted because it is not required by program rules and SECA is unsure of the value of collecting this information. Further, there is no current requirement for consultants to obtain a registration number, nor is there an official definition of “consultant.” If the FCC believes this information is valuable to collect, the definition of “consultant” must be clarified and the new requirement to obtain a registration number must be publicized in advance of imposing the new requirement via a forms change.

Block 2, Summary Description of Needs or Services Requested, Condense Categories into Priority 1 and Priority 2:

Posting requests in incorrect service categories is a major concern and is a consistent “gotcha” for applicants. It is commonplace for applicants to encounter problems with their funding requests for either telecommunications or Internet access service, when they post in one category but not the other. A common example of this problem relates to portable wireless Internet access provided by cellular companies. If an applicant posts in the telecommunications category but fails to also post in the Internet category, they risk denials of funding for portable wireless Internet access – even though the very same company that is a telecommunications common carrier (and that would have reviewed the telecommunications section of the form 470 and known the applicant wanted to receive support for portable wireless Internet access service) provides both services. Similarly, applicants and PIA reviewers alike still demonstrate confusion over whether a telecommunications transmission circuit that is used to access the Internet should be posted in the telecommunications category only OR both the telecommunications and Internet access categories. This confusion may lead to denials of funding for a ministerial error.

Similar problems can occur with respect to Priority 2 internal connections and basic maintenance of internal connections. Sometimes, applicants wishing to purchase internal connections equipment will receive proposals that include separately priced warranties. Those warranties are technically considered basic maintenance of internal connections. But if an applicant failed to post in the basic maintenance of internal connections category, the applicant cannot claim E-rate funding for the warranty costs.

With the changes in technology, and unsettled legal distinction between telecommunications and Internet access services, which are pending clarification in a separate proceeding, telecommunications and Internet access can be provided using many varieties of technology. The form 470 categories have not kept up with this concept with respect to priority one services. This is most evident when requesting portable wireless data services, broadband services, and the proposed eligibility of leased dark fiber.

For all of these reasons, SECA believes it is sufficient to have a check box to indicate whether the form 470 is for priority one, priority two or both priorities of services, and dispense with the listing of the four specific categories. We understand that the form 471 may continue to require the delineation of Telecommunications Services, Internet Access and Internal Connections for regulatory purposes, but without the service categories on the form 470, many fewer denials will be issued. By removing these categories, applicants will have a much easier time completing their form 470 applications, thereby simplifying the program. Given the form 470 download tool that is available for identifying prospective bidding opportunities, the elimination of the form 470 categories of service should not have an adverse effect on service providers.

(b) Streamline the Description of Services sections in Items 8, 9, 10 and 11 to be collapsed into one section that requires the listing of services or functions and quantity or capacity and information about issuance and online access to requests for proposals.

Block 2, Item 12, Technical Contact Person: The technical contact person's contact information should require either the telephone number, fax number or email address but not more than one of these pieces of information – which is how the current form is set up online. The check box, "Check here if this is the e-mail address you want to use for correspondence with USAC" is confusing and should be omitted. Current practice is for USAC to communicate with the contact person in Block 1, Item 6 regarding the form, which is also stated in the draft form on page 1. If the

technical contact person is the same as the contact person for the form as listed in Block 1, Item 6, the instructions should state that Block 2, Item 12 should be left blank. Alternatively, it may be much simpler to move the technical contact information to Block 1, and add a new subsection Item 8.

Block 2, Item 13: Eliminate the second check box as unnecessary. If there are no competitive bidding restrictions, then the applicant should leave the first check box blank. The language, “If you are requesting services for a funding year for which a Form 470 cannot yet be filed online, include that information here[.]” should be eliminated. As explained above regarding the elimination of the funding year, there should always be a form 470 available online to be completed.

Block 4, Recipients of Service, Item f. Number of eligible entities for which services are sought: The instructions need to clarify whether the number of eligible entities is based on the number of entities that are intended recipients of service (number of SLD entity numbers) or the number of billed entities (possible form 471 applicants).

Block 4, Item 15: Eliminate Language that states, “If a Billed Entity cited on your Form 471 is not listed below, funding may be denied for the funding requests associated with this Form 470.” As part of the implementation of the *Bishop Perry* Order, corrections to add a billed entity to a form 470, Block 4, Item 15 are permitted to be made within 15 days of notification from USAC. See <http://www.universalservice.org/res/documents/sl/pdf/List-of-Correctable-Ministerial-and-Clerical-Errors.pdf>. The cited language above conflicts with the implementation of the *Bishop Perry* Order, and should be removed.

Block 5, Item 17: Technology Plan Creation Date: Because a posted form 470 may cover multiple entities with separate technology plans, the applicant would have to report multiple technology plan creation dates. This is very confusing since the instructions do not spell out how “technology creation date” is defined. Since the FCC is considering major changes to the entire area

of technology plan requirements, it does not make sense to *add* this requirement for this iteration of the forms. It makes more sense to omit this requirement now and then once the FCC decides on what if any changes to the technology planning rules to be made, those changes should be implemented on the next version of the forms.

Block 6, Item 22 Certification: Revise this certification to be more accurate: I certify that I am authorized to competitively bid ~~order~~ the services included in this application.

These requested changes maintain the competitive bidding processes while eliminating unnecessary confusion. The changes remove “gotcha” items from the form, which will alleviate applicants’ stress and anxiety while preserving the essential purpose of this form to provide prospective bidders with adequate information about bidding opportunities.

III. Form 471

Block 1, Item 3b, Omit FCC Registration Number: Omit this addition on this version of the form and require USAC to establish a search engine that allows applicants to search for their FCC registration numbers. Alternatively, make this an optional field on this version of the form.

Block 5b, Change Applicant Demographics to Recipients of Service Demographics: Recipient of service more accurately captures the information that is to be provided here, especially because the instructions request that all applicable boxes should be checked. Also add instruction, “Check all that apply.”

Block 1, Item 6g, Consultant Information:

This information should be omitted because it is not required by program rules and SECA is unsure of the value of collecting this information. Further, there is no current requirement for consultants to obtain a registration number, nor is there an official definition of “consultant.” If the FCC believes this information is valuable to collect, the definition of “consultant” must be clarified

and the new requirement to obtain a registration number must be publicized in advance of imposing the new requirement via a forms change.

Block 2 and 3, Impact of Services Ordered on Schools or Libraries: According to form 471 instructions, Blocks 2 and 3 “...ask for data to help the SLD document the potential impact of the universal service program for schools and libraries across the country, and compare that impact from year to year. These blocks request data pertinent to all applications filed by the Billed Entity for this funding year.”¹

SECA believes the information that applicants report in Block 2 and 3 has not been useful to the Commission or USAC for determination the overall success of the E-rate program. For example, in Block 2, the information requires the number of classrooms with telephone service, but does not explain whether a teacher with a school-assigned cell phone in a classroom counts as a classroom with telephone service. The number of buildings, but not number of students, are used as the measure of broadband services, but the minimum definition of broadband service is not provided. According to the manner in which the current form could be interpreted, any service above 56 kbps could be construed as broadband. Moreover, the number of buildings is not a consistent measure – it should be the number of classrooms and a more disaggregated breakdown of this information should be required to be provided in order to be meaningful. A further complicating factor is that the data provided in Block 2 and 3 are often duplicated with school, school district and consortium applications making it impossible to show the impact of E-rate funding. Because the information collection is fraught with so many problems that it is useless, SECA proposes to eliminate Block 2 and 3.

The changes proposed in the draft form 471 do not resolve these problems. Measuring the number of buildings does not really provide a relevant indicator, since the information reported on

¹ FCC Form 471 Instructions, November 2004 Page 12.

one form 471 for a consortium may duplicate in large measure the information reported on a district application that is a member of an E-rate consortium. Data on broadband speeds serving buildings of an administrative entity should be collected via an online portal, should be entered by the administrative authority for those building (e.g., school district) and no other entity, and should be able to be updated any time throughout the year. Reporting on Form 471 is subject to too many problems (double reporting; filling in “plug” numbers in order to meet the form 471 deadline, etc.). Further, this information is much less relevant for the funding being requested compared to the funding that is approved. It makes more sense, therefore, to require reporting on this information via an online portal after the applicant receives funding approval. To the extent the Form 486 is retained, this information can be required to be provided before or at the same time a form 486 is submitted or if form 486 is eliminated, it should be required to be submitted within a certain time period following receipt of the funding commitment decision letters.

Block 5 Revisions:

Item 21 attachments must be submitted before the close of the filing window: SECA opposes this major change as it would create a considerable shift in the timing of applicants’ work load. The online Item 21 attachment module cannot be accessed by applicants until they press the submit button on a Form 471. Applicants that may not be aware of this change will be shocked to learn that they have not perfected their form 471 application by the window deadline unless they also submit their Item 21 attachments. Plus, the online Item 21 attachment module has not been reliable in past years especially during peak periods. Compounding these problems is the fact that the new form and requirement may not take effect until December of 2010 which provides insufficient advance notice to applicants of this major change. To avoid the potential catastrophe awaiting unsuspecting applicants and the inevitable onslaught of appeals and requests for waivers that will follow, SECA suggests a compromise approach where applications for which the Item 21

attachments are submitted by the form 471 deadline will be processed before other applications for which the Item 21 attachments are submitted after the form 471 deadline.

Block 6, Item 26, Technology Plan Creation Date: Because a form 471 may cover multiple entities with separate technology plans, the applicant would have to report multiple technology plan creation dates. This is very confusing since the instructions do not spell out how “technology creation date” is defined. Since the FCC is considering major changes to the entire area of technology plan requirements, it does not make sense to *add* this requirement for this iteration of the forms. It makes more sense to omit this requirement now, and once the FCC decides on what, if any, changes to the technology planning rules to be made, those changes should be implemented on the next version of the forms.

IV. Conclusion

The State E-rate Coordinators Alliance respectfully requests the Commission to defer form changes until after a rule based on the current open rulemaking is issued and the forms can be changed one time to incorporate desirable changes under current rules and changes to accommodate new requirements. If the Commission decides to issue revised interim forms, however, SECA requests revisions to the Form 470, Form 471 and associated instructions consistent with the recommendations contained herein.

Respectfully submitted,

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