



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)
_____)

**INITIAL COMMENTS ON THE FY 2012 DRAFT ELIGIBLE SERVICES LIST FOR SCHOOLS AND LIBRARIES
UNIVERSAL SERVICE MECHANISM
(DA 11-1096)**

The State E-rate Coordinators’ Alliance (SECA) submits these Comments in accordance with the FCC’s Public Notice released June 24, 2011 (DA 11-1096) seeking comment on USAC’s proposed Eligible Services List (“ESL”) for Funding Year 2012.

SECA accomplishes its work through the resources of its 98 individual members who provide statewide E-rate coordination activities in 46 states and 2 U.S. territories. Representatives of SECA typically have daily interactions with E-rate applicants to provide assistance concerning all aspects of the program. SECA provides face-to face E-Rate training for applicants and service providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the Federal Communications Commission (FCC or Commission). SECA members typically provide more than 1300 hours of E-rate training workshops annually to E-rate applicants and service

providers. In addition to the formal training hours, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails.¹

Further, several members of SECA work for and apply for E-rate on behalf of large, statewide networks and consortia that further Congress' and the FCC's goals of providing universal access to modern telecommunications services to schools and libraries across the nation.

In addition to their roles as State E-rate trainers and coordinators, most SECA members also provide the following services to the program: technology plan approval; applicant verification assistance to the Administrator's Program Integrity Assurance (PIA) Division; verification to the Administrator of applicable state laws confirming eligibility of certain applicant groups; contact of last resort to applicants by the Administrator; and verification point for free/reduced lunch numbers for applicants. Hence, SECA members are thoroughly familiar with E-Rate regulations, policies and outreach at virtually all levels of the program.

I. All Telecommunications Surcharges and Fees Should Be Eligible.

There are a myriad of separately itemized line item fees and surcharges that telecommunications carriers place on phone bills, for which some – but not all – are eligible for E-rate discounts. Some of these fees include:

- Subscriber Line Charge
- FCC Charge for Network Access
- Federal Line Cost Charge
- Interstate Access Charge
- Federal Access Charge
- Interstate Single Line Charge
- Customer Charge
- Universal Connectivity Fee
- Universal Service Administrative Fee
- Local Number Portability Fee
- Carrier Universal Service Charge
- Minimum Monthly Charge

¹ Our Alliance operates without any administrative staff and no administrative funds are allocated from E-rate or any other source of federal funds to offset the States' respective costs of funding the State E-rate Coordinator positions.

- 911 Fee
- E911 Fee
- Special Tax
- Federal Excise Tax
- Detailed Billing Fee
- Paper Statement Fee
- Property Tax Allotment
- Administrative Expense Fee
- USF Administrative Fee
- Regulatory Surcharge
- Regulatory Recovery Cost Fee
- White Page Fees
- Additional Directory Page Listing
- Non-Published Phone Number Fee

These fees are a minimal amount of the overall monthly bill yet they have become an enormous administrative burden on the program. Schools and libraries are compelled to review every line of every bill, many of which are hundreds of pages each month, to identify which of these small fees must be cost allocated and removed from their BEAR reimbursement or their Form 471 request. This task is further complicated when the school or library personnel try to decipher which charges are eligible and which are not because there is no consistent naming conventions between carriers and no comprehensive list of which charges are eligible and which are not. PIA and invoice reviewers spend a disproportionate amount of time weeding through Item 21 attachments and invoices, posing follow-up questions, to ensure that none of these rather miniscule charges are included as part of authorized funding or disbursement. Moreover, there is no statutory imperative underlying the current prohibition against funding these charges. The Commission certainly has the legal discretion to deem these incidental charges to be eligible.

For example, a small, simple AT&T long distance bill lists the following items under Surcharges:

- Federal Universal Connectivity Charge
- Administrative Expense Fee
- Property Tax Allotment
- Federal Regulatory Fee

To anyone who is not a USAC Invoice Team Reviewer or account manager for AT&T, the eligibility of these charges is difficult to determine. In fact, even representatives of these companies often are unsure whether such charges are eligible for E-rate funding or not.

To further use the AT&T example, schools and libraries have no choice as to whether these fees are assessed, as the company is passing through the charges to cover their expenses of doing business. We are not arguing that companies should not have the right to pass along these charges, although one could do just that for the USF administrative fees, but rather that such fees are required by the phone companies and are not optional. They are no different than a tax that is being imposed, and all taxes are eligible for E-rate discounts. In fact, the Eligible Services List already states that costs to subscribe to a telephone service are generally eligible for discount, and certainly since these charges are not optional, they are therefore required in order to subscribe to the phone service.

Another way of looking at it is that most of these services are already eligible and receiving E-rate support. This is because many companies have billing systems that bundle all of these charges in with their usage charges or monthly recurring charges, and therefore they are and have been eligible for E-rate support for many years. School and library customers of telecommunications companies that have not adopted this bundled billing philosophy should not be penalized and be made to cost allocate these charges.

The cost for school and library personnel to page through hundreds of pages each month to identify these charges severely outweighs the actual costs of the fees themselves which in many cases are less than a dollar per charge. This is in addition to the vast time spent by PIA reviewers and USAC invoicing reviewers who are required to review every line of every bill submitted to ensure that each of these fees has been properly removed from the request or invoice.

In the FCC's Fifth Report and Order, referring to the recovery actions for improperly disbursed funds, the Commission recognized that there is some threshold amount of improperly disbursed funds below which it is not economically feasible for USAC to seek recoupment. "We conclude that it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery." Schools and Libraries Universal Service Support Mechanism, Fifth Report and Order, FCC 04-190 (Order released August 13, 2004) at ¶35. Accordingly, the FCC directed USAC to not seek recovery of such "*de minimis*" amounts. The FCC further directed USAC to

provide the Wireline Competition Bureau and the Office of Managing Director sufficient information regarding the administrative costs of seeking recovery of improperly disbursed funds so that a *de minimis* amount could be determined. While the *de minimis* amount, if set, was never publicly announced, we are certain it is more than the amount of any of the surcharges or fees that are deemed ineligible on customers' phone bills.

SECA strongly urges the Commission to clarify that all surcharges and fees imposed by telecommunications carriers be eligible for E-rate support.

II. Allow Priority 1 Services to be Posted in Either the Telecommunications Services or Internet Access category in the Form 470.

Posting requests in incorrect service categories is a major concern and is a consistent and increasingly common "gotcha" for applicants. USAC recognizes this problem and confusion and advises applicants to post in both categories, which is only a band-aid to the problem and not a real solution. SECA requests that the Commission use the introductory language of the FY 2012 Eligible Services List to alleviate this "gotcha" in the interim until the Form 470 can be permanently modified. We understand that the Form 471 requirement that the applicant must identify whether the service is a Telecommunications Service or Internet Access Service will remain for regulatory purposes.

It is commonplace for applicants to have their funding requests for either telecommunications or Internet access service denied because they have posted in the incorrect category. A common example of this problem relates to mobile broadband services provided by cellular companies. If an applicant posts in the telecommunications category instead of posting in the Internet category, their funding request will be denied— even though telecommunications common carrier's are the only companies that provide this service. Further, such mobile broadband services are, indeed, actually *telecommunications services*, provided by telecommunications common carriers for which data and Internet access is an application that travels over the mobile broadband line. Cellular providers use their cellular – telecommunications – infrastructure to

provide this service, yet it is listed in the Internet access category of the Eligible Services List and applicants are supposed to post in a category that is counter intuitive to the actual service being provided and the vendors providing that service. We point out this specific issue to illustrate how blurred the lines have become between telecommunications services and Internet access.

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.

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 leased dark fiber.

For all of these reasons, SECA requests the Commission to use the introductory language in the FY 2012 Eligible Services List to instruct applicants and USAC that they should try their best to post these services in the correct category, but if it is found by USAC during PIA review that a service was inadvertently listed in the wrong category, it will treat it as a clerical error and not deny the funding request. We understand that the Form 471 will continue to require the delineation of Telecommunications Services and Internet Access categories for regulatory purposes, but with FCC language in the FY 2012 in the ESL that provides relief for mis-classifying a Priority 1 service, many fewer denials will be issued. By removing this “gotcha”, applicants will have a much easier time completing their Form 470 applications, thereby simplifying the program.

III. The ESL Language Concerning The Eligibility of Telephone Lines for Alarm Services Should Be Clarified to Remove an Existing Ambiguity.

As in past years, the draft ESL contains two different entries concerning telephone service related to alarm services that could be construed as contradictory. Recently, applicants have been asked to provide additional documentation concerning alarm service telephone lines that suggest there may be some internal confusion about this matter that could be easily rectified by providing clarification in the final version of the 2012 ESL.

On page 5 of the draft ESL, the definition of eligible telecommunications service includes:

Service to an eligible location for educational or library purposes can provide voice communication, fax connections, modem connections, 911 or an alarm.

This is consistent with SECA's understanding that telecommunications lines to an eligible location are eligible for E-rate support regardless of whether the phone line is used for voice, data (fax or modem), 911 or alarm service.

On page 6 of the draft ESL, the definition of *ineligible* telecommunications services includes:

Services that go beyond a telecommunications service, such as monitoring services for 911 or an alarm telephone line.

(Emphasis added). SECA believes that this second entry is intended to describe an alarm service that is subscribed to by applicants for security purposes. An alarm telephone line is meant to refer to an *information service as opposed to a telecommunications common carrier service*. In other words, if an applicant incurs a charge from a telecommunications common carrier for a phone line that is used to provide an alarm signal to an alarm company, that service is eligible for E-rate support; however, any charges incurred from the alarm company for the monitoring service is not eligible for E-rate support.

We recommend that the entry on page 6 of the draft ESL be clarified to read as follows:

Services that go beyond a telecommunications service, such as monitoring services for 911 or ***alarm monitoring services***.

IV. MINOR WORDING EDITS

Upon close review of the draft ESL, we noticed two typographical errors.

Under the Digital Transmission Services listing, the last bullet states WirelessWireless Telephone Services.

Also, under Internet-Related Services, it lists, "lit or" and we believe it should read, "lit or leased dark fiber services."

Conclusion

SECA requests the FCC to modify the FY 2012 Eligible Services List consistent with the comments submitted herein.

Respectfully Submitted by:

/s/ Gary Rawson
Gary Rawson, Chair
State E-rate Coordinators' Alliance

Mississippi Department for Information Technology Services
3771 Eastwood Drive
Jackson, Mississippi 39211
601-359-2613
rawson@its.state.ms.us
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