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
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	

INITIAL COMMENTS OF
THE STATE E-RATE COORDINATORS' ALLIANCE
TO THE FURTHER NOTICE OF PROPOSED RULEMAKING
RELEASED ON JULY 21, 2023 (FCC 23-56)

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I. SUMMARY OF COMMENTS

The FCC's Further Notice of Proposed Rulemaking released on July 21, 2023[1] offers an extraordinary opportunity to further streamline the E-rate program by inviting comments on numerous requirements that could be streamlined and clarified. These modifications, if adopted, would build on the important improvements adopted in the Tribal E-rate Order which were designed to make E-rate more accessible to all entities, particularly Tribal libraries and other Tribal entities. Numerous additional areas discussed in the FNPRM invite comments on proposed solutions for ambiguous program requirements, identification and resolution of various procedural obstacles, streamlining of E-rate forms and improving the flexibility of the program to be responsive to applicants' broadband needs. We are delighted that the Commission is taking this additional, significant step to further reform the E-Rate program.

These initial comments of the State E-rate Coordinators' Alliance (SECA)[2] set forth a multitude of proposals to improve E-rate while preserving program integrity. SECA believes that many of its suggestions, if adopted, would provide more explicit, clear cut rules and facilitate compliance, thereby further reducing inadvertent infractions, and lowering the 3.7% Improper Payments percentage for E-rate in 2022.[3] Equally as important, the program will be more efficient, less bureaucratic, and updated to reflect current and evolving future needs of schools and libraries.

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[1] *Schools and Libraries Universal Service Support Mechanism,* CC Docket 02-6, Report and Order and Further Notice of Proposed Rulemaking, 2023 FCC LEXIS 2252 (*Tribal E-rate Order or FNPRM).*

[2] SECA is composed of State E-rate Coordinator members representing 42 states and 2 U.S. territories. SECA members provide year-round training, assistance and helpdesk support to school, library and consortium applicants and assist E-rate service providers to facilitate their success with obtaining E-rate funding and complying with program rules. State E-rate Coordinators also serve as an interface with USAC and verify the eligibility of schools and libraries and other data points as necessary to ensure program compliance. Many SECA members are also responsible for procuring the contract services and filing statewide or large regional Form 471 applications for state or large regional wide area network services. www.secaerate.net

[3] U.S. Gen. Accounting Office, GAO-23-106585, *Improper Payments: Programs Reporting Reductions Had Taken Corrective Actions That Shared Common Features* (2023), p. 8. https://www.gao.gov/assets/gao-23-106585.pdf.

The following list briefly describes the recommendations in these initial comments.

Eligible Services

- The FCC should clarify and allow applicants to obtain E-Rate funding under two different internet service agreements as eligible, non-duplicate funding.
- Reclassify software updates and patches, and basic technical support, as "basic technical support" and classify it as internal connections.
- Allow multi-year prepaid "basic technical support" to be fully eligible in the first year of purchase, identical to multi-year licenses.
- Managed Internal Broadband Service and maintenance services not considered "basic technical support" (those services remaining in the Basic Maintenance of Internal Connections description should be combined into "Third Party Operation and Maintenance."
- Wiring between two eligible buildings (schools or libraries) on the same campus should be eligible as either Category 1 or Category 2. If being requested under Category 1, the current requirements to create an RFP, and to also solicit bids for services provided over third party networks and compare the cost-effectiveness of these solutions, should be eliminated for these short-distance cabling between two buildings.
- Bidding of leased dark fiber service and leased lit fiber service should be identical and additional obligations for the bidding and evaluation of leased dark fiber should be lifted.
- Mid-year bandwidth increases should be allowed and funded by E-Rate as competitive bidding exceptions.

Competitive Bidding

- Uniform bidding exemptions for all applicants should be adopted. There should be a $3,600.00 annual prediscount exemption per building for any service or equipment (Category 1 or Category 2). Additionally, applicants requesting prediscount funding of $10,000 or less per FRN should be exempt from E-Rate bidding rules and should follow applicable local and/or state bidding rules.
- Clear and reasonable standards for allowable changes and non-allowable changes to pending procurements considered within the scope of the original Form 470 and/or RFP should be adopted and publicized.
- Generic email solicitations from vendors that contain a price list of all goods and services they sell, and/or contain incomplete or tentative pricing, do not meet the Federal Acquisition

Ambiguities in program rules may result in improper payment findings despite an applicant's honest and well-intentioned compliance efforts. Under the Improper payments statute, 31 U.S.C. § 3352(c)(2), any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements is improper. If an ambiguity in program rules is interpreted against the applicant, and viewed as a program violation, the finding may be designated as an improper payment.

Regulation definition of “offer” and applicants are not required to address these solicitations in their bid evaluation or retain these documents.

- The Form 470 bid deadline should be presumed to 11:59 pm ET on the day before the allowable contract date unless a longer deadline is specified in Form 470 or bid documents. Applicants should not be required to consider and evaluate bids received after the Form 470 deadline.
- A competitive bidding portal will not mitigate automated responses to Form 470 applications or mitigate late submitted bids.

Contracts

- The legally binding agreement requirement should be administered more flexibly in accordance with prior FCC Orders and waiver decisions.
- Preferred master contracts based on state-level contracts should be established as another way for applicants to meet the competitive bidding requirements of E-Rate.

E-rate Forms, Procedures and EPC Streamlining

- Applicants should have the option to rely on a fixed five-year E-Rate discount percentage similar to and conterminous with the five-year Category 2 budget cycle.
- The discount rate validation process should be revised due to the evolving nature of NSLP data accuracy.
- CIPA Compliance for consortium members, documented via Form 479, should be allowed for multiple years and not be limited to one program year per form.
- The Commission's proposed solutions for implementation of transition of services should be adopted.
- Invoicing streamlining measures should be adopted including issuance of urgent letters with a 15-day period to cure a missed deadline, allow USAC to approve invoice extensions filed within 15 days of the original deadline, and confirm USAC may approve appeals of BEAR and SPI decisions via a revised FCDL and provide 120 days from the date of the letter to refile the invoice.
- Applicants or service providers that may be put on Red Light status should have an opportunity to address and resolve the problem and their E-Rate forms and documents pending with the administrator should be placed on hold rather than dismissed.
- The E-Rate consortium definition should be updated.

II. THE FCC SHOULD CLARIFY AND ALLOW APPLICANTS TO OBTAIN E-RATE FUNDING FOR TWO DIFFERENT INTERNET SERVICE AGREEMENTS.

As schools and libraries increasingly rely on the Internet for the education of students, access to library materials by patrons and also for their respective business operations, via the "Internet of Things,"[4] any interruption in Internet service – regardless of brevity or longevity – has become intolerable because the institutions are unable to function. This priority of ensuring continuously available Internet is confirmed by the vast majority of applicants – 87% -- who responded to the Funds for Learning 2022 E-Rate Survey; stating that E-Rate should fund dual Internet services.[5]

The E-Rate program must evolve to keep pace with the evolving connectivity needs of schools and libraries. Internet service is just as vital to schools and libraries as electricity. Without Internet access their operations grind to a halt, as we have seen with recent cyber-attacks; schools have been forced to close because Internet is completely down. Indeed, the E-Rate rules already allow for uninterruptible power supply units to be funded so that in case of a power outage the E-Rate eligible network equipment can still function.

This same approach that applicants take with electricity is now needed with respect to Internet service. SECA believes that the common use of the words "failover," "backup" and "redundant" to refer to dual Internet services has created a misconception that all the Internet services from both Internet sources would not both be used during the funding year.

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[4] The Internet of Things (IoT) describes physical objects embedded with sensors and actuators that communicate with computing systems via wired or wireless networks—allowing the physical world to be digitally monitored or even controlled. https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-the-internet-of-things

[5] https://www.fcc.gov/ecfs/document/1004011949460/1, slide 10. See also https://www.fundsforlearning.com/e-rate-data/trendsreport/. The total number of respondents was 2,085 or nearly 10% of all applicants. Comments from respondents noted in the Trends Report include: Comment #319: "The ineligibility of failover/dual services is really problematic. Getting that to be eligible is top of my list for inclusion to E-Rate." Comment # 341: "…Make multiple redundant connectivity eligible! Schools, especially large districts and consortia, cannot afford to depend on a single connection -- redundant infrastructure is a must-have in this era." *See also* Comments #380, #418, #438, #452.

USAC's rationale for denying funding of two different Internet service FRNs originated from the FCC's *Second Report and Order and Further Notice of Proposed Rulemaking* in CC Docket No. 02-6 (FCC 03-101)(Order released April 30, 2003) which stated:

> Duplicative services are services that deliver the same functionality to the same population in the same location during the same period of time. We emphasize that requests for duplicative services will be rejected on the basis that such applications cannot demonstrate, as required by our rules, that they are *reasonable or cost-effective.*[6]

The FCC went on to clarify not all services delivered to the same location with the same functionality are prohibited and *may* not be reasonable or cost-effective but this is a case by case determination:

> Therefore, we conclude that this rule *can be* violated by the delivery of services that provide the same functionality for the same population in the same location during the same period of time. *We recognize that determining whether particular services are functionally equivalent may depend on the particular circumstances presented.*[7]

The *Second Report and Order* does not state that services that provide the same functionality to the same population are per se duplicative and therefore ineligible. Rather, the FCC makes clear that the inquiry must consider the particular circumstances, and whether the two services are reasonable or cost-effective.

The *Macomb Order*[8] elaborated on when two services that may appear at first glance to be duplicative are eligible for funding because the two services are reasonable, cost-effective and serve different recipients of service. The applicant in *Macomb* was permitted to purchase circuits from different vendors to serve different recipients of service arising from the same procurement, but the

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[6] Schools and Libraries Universal Service Support Mechanism, *Second Report and Order and Further Notice of Proposed Rulemaking,* CC Docket 02-6, FCC 03-101 (Order released April 30, 2003) at ¶21 (emphasis added).

[7] *Id.* at ¶24 (emphasis added).

[8] Requests for Review by Macomb Intermediate Unit Technology Consortium, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 22 FCC Rcd 8771 (2007) (Macomb Order).

approved pre-discount amount for both FRNs was limited to the lowest cost service to ensure the costs were reasonable.

Moreover, the *Macomb Order* was decided in 2007 – a technological lifetime ago -- and related to an applicant requesting multiple T-3 circuits and did not explicitly address Internet service from two different sources. Just as E-rate was modernized in 2014, the Macomb Order and associated principles also must come of age.

Networks commonly are designed and implemented intentionally to incorporate the use of two different Internet service providers for load balancing and reliable connectivity. Known as multi-homing, the network is connected to multiple providers, and uses the two different Internet connections from two different vendors. In the event one of the services fails, the Internet traffic will be handled by the other vendor who is already providing service to some locations. [9] But again, just to emphasize that this is not redundant or surplus service because both services are being used and no service is sitting idle just in case there is an outage.

The E-Rate program should adapt and recognize that multiple Internet sources help to make networks more resilient, by allowing them to recover, converge or self-heal to restore normal operations after a disruptive event. E-rate should embrace this sound technology planning and implementation rather an discourage it.

The FCC has proposed a strict cost standard when applicants are seeking E-rate funding for multiple Internet FRNs. SECA disagrees with imposing a strict cost standard that doesn't exist for any other service or procurement in the program. Rather, we believe the governing cost-effectiveness standard should apply when an applicant selects two separate service providers to provide their needed Internet access.

[9] https://www.techopedia.com/definition/24984/multihoming

SECA proposes the following principles and procedures for addressing applications that seek funding for two different Internet services:

- Contracts that were procured during different funding years should have a presumption that each service was cost effective, based on their bid evaluation. Assuming no further concerns were uncovered, additional PIA reviews simply for multiple Internet FRNs bid in different years would not be warranted.
- Where two service providers were selected from the same procurement and two FRNs submitted, PIA should seek to ensure that the two most cost effective service offerings were procured (not the two lowest priced proposals). Rather than starting with the presumption that the service is duplicative, applicants with two Internet FRNs should be asked to explain why the services are cost-effective and not duplicative.
    - For example, applicants that conducted two separate procurement should explain that there was one cost-effective vendor chosen from each procurement.
    - If two vendors were chosen in response to a single procurement, the applicant should explain their evaluation and how they determined there were two most cost-effective bidders. For example, it may be that the Internet services are not the same type; one service is direct Internet access while the other service is on a shared network with no guaranteed bandwidth quantity. In this situation it would be logical that the direct Internet access service is more expensive than the non-dedicated Internet but was the most cost effective option among the direct Internet access service proposals. Likewise, the non-dedicated Internet service may be less expensive since there is no service level agreement and may have been the most cost effective solution among the non-dedicated Internet proposals. Alternatively, the applicant may have chosen two equally cost-effective proposals for the same type of Internet.

- The cost-effectiveness evaluation standard, and not a more stringent standard based solely on cost mentioned by the FCC in the FNPRM should govern these procurements.[10] other, non-cost factors during a cost-effective evaluation. This more stringent standard is not warranted since the applicant must ensure that the services meet their technical needs in addition to being reasonably priced and cost-effective.
- Last, the duplicative service analysis should not apply to those situations where the applicant applies for one Internet FRN on their own Billed Entity Number's (BEN's) Form 471 application and they also receive Internet from a consortium, since the services are selected and purchased in two separate procurements.

III. MID-YEAR BANDWIDTH INCREASES SHOULD BE ALLOWED AND FUNDED BY E-RATE.

Similar to the issues that applicants face when implementing the transition of services, applicants may find themselves in the position of needing greater bandwidth than they had initially predicted at the time they filed their Form 471.

The Commission asks if mid-year bandwidth increases should be permitted as a competitive bidding exemption, how these increases would be implemented, how USAC can keep track of such increases, and if applicants should be required to competitively bid for the increase in the subsequent funding year.[11]

As explained in our comments to the Tribal E-rate NPRM, SECA feels that it would be in the interest of the program to carve out an exception to the competitive bidding rules to allow applicants to increase bandwidth during the school year (*i.e.*, mid-funding year) without posting a new Form 470. Further, neither the establishing Form 470 nor the original contract would need to have included any provisions for the increased bandwidth. The request to change the approved bandwidth would be

[10] *FNPRM,* ¶47.
[11] *FNPRM*, ¶¶ 51-52.

performed by submitting a service substitution to USAC, along with the new vendor contract or service order.

Additionally, SECA recommends that the service substitution should allow for increases in the pre-discount price to committed FRNs with the same vendor for the same or lower per-Mbps price. The new price requested in the service substitution may also include a non-recurring installation charge for the additional bandwidth (but not special construction charges). We note that the term of the contract may not be extended past the original term or any voluntary extensions options that are provided for in the existing contract.

SECA considers that the documentation associated with the service substitution request would be sufficient for USAC to keep track of such mid-year bandwidth increases. If USAC needs a simple way to separate this sort of substitution from others, then similar to our proposal for service substitutions due to the transition of services, we propose that the service substitution form could be modified to include a check box or other field that indicates that a mid-year upgrade is the reason for the request.

There are a few circumstances under which SECA recommends that the mid-year bandwidth increase must be rebid to ensure the service is cost-effective. The applicant must post a Form 470 for additional bandwidth mid-year if:

- The purchase is from a new vendor
    - If the existing vendor cannot provide the additional bandwidth
    - If the applicant simply wishes to use a different vendor
- There is a special construction charge to install the additional or higher bandwidth
- The applicant wants to extend the term of the new agreement beyond the original term or beyond any voluntary extension option specified in the original agreement

In each of the above situations, the applicant would be required to conduct a new Form 470 competitive bidding process, select the most cost-effective vendor, and request the approval of the increased bandwidth for the current funding year via a service substitution to split the FRN.

For those situations where the amended agreement with the increased bandwidth extends for at least one year beyond the end of the current funding year, applicants would not be required to competitively bid for the increased bandwidth in the subsequent funding year. Applicants would simply list the increased bandwidth and pricing on their next Form 471. If the original contract term or the term of voluntary extensions ends with the current funding year, then a new Form 470 would need to be filed for the subsequent year regardless of any mid-year bandwidth increases.

IV. APPLICANTS SHOULD HAVE THE OPTION OF VALIDATING AND USING THE SAME DISCOUNT PERCENTAGE FOR FIVE YEARS.

SECA urges the FCC to adopt a five-year discount cycle to be coterminous with the five-year Category 2 budget cycle. Currently, applicants are required to update their enrollment and NSLP data each year in their EPC profiles during the Administrative Window, and USAC is required to validate this data annually as the applications are reviewed. State E-rate Coordinators spend countless hours (often weeks) compiling the enrollment and NSLP data for each school, matching it to individual school building E-rate entity numbers and names, and formatting it to send to USAC for their annual "NSLP Valid File"[12] which is then used by PIA reviews to conduct the discount validation. In all, the annual discount population and validation process is antiquated and ripe for reform.

The current NSLP data validation process is especially an issue for state consortium applications that often find themselves at the back of the queue while applications filed by consortium members are

[12] We also note that the steps that state E-Rate coordinators must complete to supply the requested state valid file for each funding year can also be quite onerous. Many state coordinators do not receive the data in a timely manner that aligns with when the request for the file is made. Other states have schools that do not c report their data to the Department of Education for one or more of their schools that have opted out of the NSLP program resulting in the need to obtain data using an alternative discount mechanism, validating that data, and then adding it to the valid file. Still other schools report the lunch data for non-public schools in their area for which state coordinators must try to discern which entities should be removed.

validated for discounts by PIA reviewers. Another concern affects consortia discounts since consortia billed entities have no control over the discount information that their members have entered into their EPC profiles, and yet consortia are called upon to justify this data as part of their own PIA review.

SECA believes that setting an individual applicant's discount rate for multiple years would simplify the E-Rate program for applicants as well as USAC by cutting back dramatically on the time and effort expended by both parties during annual application review. By aligning with the budget term and linking two similar processes and data collection efforts, enrollment and discount rate data for most applicants need only be validated once every five years on a predetermined schedule. If adopted, this would mean that current discount rates would not have to be reevaluated until the FY 2026 application cycle and every five years thereafter.[13]

As is the current procedure with replacement Category 2 budgets, discount rates would be validated for five years with applicants having the opportunity to initiate changes to their discount within that period if they can support an increased discount rate.

If there is a change in rurality data from the U.S. Census within any given term, we would suggest that such changes not be implemented across the board until the next five year discount term begins at which time any necessary adjustments could be made for all affected applicants.

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[13] Implementation of the lower 25% ISP threshold for CEP participation, should it occur later this school year, might result in more discount rate changes for FY 2024 than might normally occur in an intermediate funding year.

V. DUE TO EVOLVING ASPECTS OF THE NATIONAL SCHOOL LUNCH PROGRAM, OTHER STANDARDIZED MEASURES OF FAMILY INCOME MAY BE APPROPRIATE FOR DISCOUNT VALIDATIONS

The *FNPRM* in paragraph 69 asks for comments on potential ways to streamline discount rate validation for E-Rate applicants focusing specifically on:

- Adoption of a presumption that discount rates do not change from year to year.
- Situations, if any, that might trigger discount rate revisions.
- Any future changes to the Community Eligibility Provision (CEP).
- Impact of statewide CEP or statewide free lunch programs.

In considering how best to respond to these questions, SECA wholeheartedly concurs with the Commission's statement that "for the majority of applicants, their discounts do not change from funding year to funding year." Changes, even when they do occur, have been less frequent in recent years, and are likely to remain so, as more schools and districts have opted into the federal multi-year CEP initiative. This trend likely will accelerate rapidly if, as may soon occur, the U.S. Department of Agriculture adopts its proposed reduction in the qualifying ISP threshold from 40% to 25%.[14] Non-CEP schools typically have lower NSLP percentages and thus lower discounts. Although those schools' NSLP percentages may vary year-to-year, the broad bands in the discount matrix limit significant changes in discount rates that, when they do occur, are typically no more than single steps in the lower discount ranges.

Despite this, the current process entails validation on NSLP discount rates with every application cycle, bogging down the review process as applicants provide documentation to PIA reviewers, who then must compare and validate it with third-party sources such as the state's valid file or a letter from the state's Department of Education.

[14] 88 Federal Register 17406 (2023). 88 Federal Register 17406; https://www.fns.usda.gov/cn/fr-032323

NSLP percentages, as determined by annual parental income surveys, were chosen originally as the most ubiquitously and readily available poverty measure for most schools but we are now seeing that those percentages may not accurately measure student poverty. With the expanded use of CEP based on a 1.6 multiplier of school or district-wide ISP percentages drawn from family assistance databases, the ubiquity of NSLP availability is diminishing. Conceptually, if not precisely, CEP data also provides the same basis for higher discounts (80-90%) for schools with the higher percentage of students from low-income families. For individual schools and school districts, SECA recommends that the FCC continue to treat NSLP percentages as equivalent whether calculated from individual NSLP surveys or, for CEP applicants, as 1.6 multipliers of reported ISPs. We see no need to change this approach if, or when, the USDA reduces the minimum ISP threshold to 25% for CEP participation.

SECA also recognizes that at least eight states are providing free lunches for all students during the 2023-2024 school year. In these cases, the states are funding the net additional costs of such meals, over and above the National School Lunch Program subsidies. Theoretically, as a result, individual NSLP and/or CEP data are available to calculate traditional discount rates for the schools and districts in these states. As a practical matter, however, accurate NSLP survey data may be difficult to obtain from parents knowing that their children will be fed for free, and thus school districts in those states are struggling to accurately assess and report NSLP data.

Where they have historically relied on data that tracked student eligibility for free and reduced-priced meals to report their poverty level for E-Rate, the desire by the states to do something beneficial for all students has unfortunately removed the incentive for individual families to complete school meal applications and household income forms because no specific benefit is attached. The result is that the reported NSLP percentages are lower, and ultimately can drastically lower the E-Rate discount assigned. This has a cascading effect as the lower E-Rate discount for the school district affects the library utilizing that discount and finally affects the overall discount for the consortia that may provide services to the

district and library. Multiply that equation times all or most consortium members, and consortia are finding application percentages lowered by 1% or 2%, which on its face may seem insignificant until one does the math on what 1% of a several hundred thousand or million dollar application equals. This results in a fundamental unfairness of current E-Rate discount calculations methods using NSLP for states that provide free lunch to all students regardless of income, where in effect states are being "rewarded" for their generosity by receiving lower E-Rate discounts.

It is for these and other reasons that SECA firmly believes that it is time to step back and rethink reliance on NSLP data as the primary poverty measure for schools. At a minimum, to address the issues surrounding NSLP that are applicable for all discount rate situations (*i.e.,* not just for states offering free meals), SECA recommends that all applicants be permitted to use direct certification data with a 1.6 multiplier. If direct certification data are not available, then program rules should continue to allow for alternative discount mechanisms calculations for any school without direct certification or NSLP data.

VI. THE FCC SHOULD ESTABLISH CLEAR STANDARDS FOR ALLOWABLE FORM 470 PROCUREMENT UPDATES WITHOUT HAVING TO EXTEND THE BID DEADLINE.

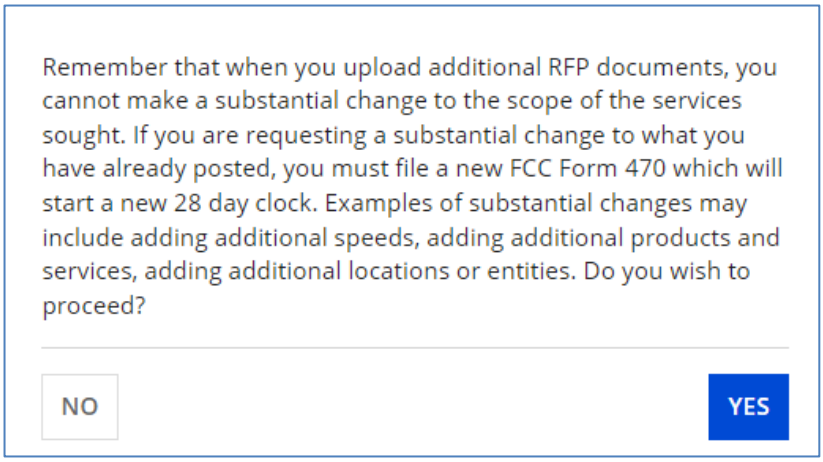
E-Rate competitive bidding has a basic standard of fairness and openness that is further clarified by numerous FCC orders and appeal decisions. The requirement to extend the bid deadline due to a "Cardinal Change" in the bidding information does not appear in any FCC regulation, order, appeal decision or other FCC publication. This requirement was first imposed, we believe, in the fall of 2015 and has expanded since then but has not been explained or defined with any specificity.[15] In fact, USAC's guidance on Cardinal Changes is inconsistent. USAC routinely states that if a significant (cardinal) change

[15] See, e.g., SLD News Brief dated July 17, 2015, https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=632; Service Provider FY 2017 Training Presentation, "Competitive Bidding for Service Providers," Slide 12; https://apps.usac.org/_res/documents/SL/training/2017/Competitive-Bidding-for-Service-Providers_2017.pptx; SLD News Brief, August 10, 2018, https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=850; SLD News Brief, February 1, 2019, https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=872; SLD News Brief, January 10, 2020, https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=872;

is made to the bidding documents, the deadline for receipt of bids must be extended to 28 days from the date the change was uploaded to the E-rate Productivity Center ("EPC").[16]

The News Briefs also state that if the changes can fit into the description of the existing FCC Form 470 the applicant can add and RFP document to provide information about the change(s) you want to make.[17] However, if a new RFP document is posted and the changes are "significant", the applicant must restart the 28-day clock. The term "significant" is not defined, leaving applicants to guess which changes are significant or within the scope of the original RFP.

Yet, the pop-up message that appears after an RFP document is uploaded to an existing Form 470 does provide examples of substantial (cardinal) changes and those are quite expansive:



The pop-up language is in direct conflict with the News Brief as the pop-up does not allow applicants to make significant changes by uploading an RFP document and requires applicants to post an entirely new FCC Form 470. Likewise, the USAC FCC Form 470 User Guide states, "When the confirmation pop-up message appears, note that you cannot make a cardinal change to the scope of the services after your form is certified."

[16]Initial guidance in FY 2016 and FY 2017 was to re-file a Form 470 and post the new bid document. This guidance was then modified later to state that the deadline for bids must be extended for 28 days from the date of the submission of the additional information.
[17] https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=872

SECA welcomes the FCC's invitation for comments on this important issue and we hope that the FCC will publish clear, reasonable and measurable factors to guide applicants' review of whether a change or addition to their bid documents is cardinal and requires the deadline for bids to be extended to 28 days from the date of uploading the additional information in EPC.

In response to the FCC's request for common examples of modifications that may be necessary to bid documents, SECA believes the following changes are regularly made to bid documents particularly for large procurements such as state and regional network services and large school districts with many different service locations and do not require extensions of bid deadlines under state procurement rules:

1. Increases (or decreases) to the minimum and maximum bandwidth of data transmission and/or Internet access circuits.
2. Increases (or decreases) to the number of circuits for data transmission services, fiber services (leased lit and leased dark fiber and self-provisioned service or Internet access circuits).
3. Increases (or decreases) to the quantity of equipment listed in the original Form 470 and/or bid document.
4. Adding a new service request for internal connections equipment – for example, the Form 470 and/or bid document did not request bids on routers but there is a modification to the bid document to add routers to the procurement.
5. Adding a request for licenses, MIBS or BMIC (or the proposed new "Operation and Maintenance of Internal Connections") for equipment already listed in the Form 470 and/or bid document.
6. Correcting or clarifying names and/or physical addresses of buildings that are included in the Form 470 and/or bid document, and are E-Rate eligible locations.
7. Correcting or clarifying names and/or physical addresses of buildings that are included in the Form 470 and/or bid document, and are not E-Rate eligible locations.
8. Answers to vendor questions.
9. Uploading a presentation that the applicant made available to prospective bidders during a pre-bid conference.
10. Clarification of bid submission process or deadline.

We understand there must be guardrails established so that truly significant changes are not made to RFP documents close to the bid deadline. With respect to Items 1 through 3, when the quantity changes

by 25% or less of the original quantities, SECA proposes the changes should be allowable within the scope of the original procurement and not require an extension of the bid deadline. When the quantities change by 26% or more, the changes would be considered cardinal and therefore require an extension of the bid deadline of 28 days.

For example, if the minimum bandwidth or maximum bandwidth of requested Category 1 circuits increased 25% or less from the original bandwidth, the change would not be cardinal. Likewise, if the quantity of equipment or circuits in an existing service request increased by 25% or less, the change would not be cardinal. Changes of these types that were for 26% or more would be cardinal and require the bid deadline to be extended.

We also submit that the addition of a new service or equipment request to a Form 470 or bid documents, such as the addition of wireless equipment to a Form 470 that requested bids for switches, would be considered a cardinal change and requires a 28 day extension of the bid deadline. But the addition of "Basic Technical Support" as we defined above in Section II or licenses for equipment already bid in the Form 470 or RFP documents should be allowable changes and not considered to be cardinal (significant) changes as they are ancillary to the use of the equipment already included in the Form 470 and/or bid documents.

We propose that the additional information that may be uploaded to EPC within the 28 day bidding period in Items 6 through 10 are not cardinal changes and do not require the bid deadline to be extended. All of this information is clarifying in nature and does not rise to the level of a significant, cardinal change. Address clarifications are particularly intricate because a physical building may have several different physical addresses: the address in the school directory, the 911 emergency responder address and the vendor's address of the demarcation of its facilities nearby the building.

We also propose that all other changes that are not considered significant (cardinal) must be uploaded to EPC no later than seven calendar days prior to the deadline for the submission of proposals

so that the prospective bidders have all the clarifying information in hand before finalizing their proposals. The FCC should explicitly delegate authority to the Wireline Competition Bureau in conjunction with the Office of Managing Director to publicly issue additional clarifications of circumstances that are cardinal changes. In the absence of a change appearing on the list of cardinal changes in a published FCC official document, the modification or change to a Form 470 and/or bid document shall be classified as allowable, and not cardinal changes.

Last, SECA submits that the EPC system must be retrofitted to allow applicants to upload an RFP document to any existing Form 470. The content of the RFP document should be evaluated based on the proposed framework described above to determine if the document constitutes a significant (cardinal) change. Currently the ability to upload an RFP document after the Form 470 is certified is limited to those Form 470s that uploaded an RFP as part of the original form. The only way a clarification document may be shared with vendors is outside of EPC. If the applicant has a clarification document such as answers to vendor questions they would like to share with all prospective bidders, uploading the document will ensure that EPC will be the repository of all the bidding documents and all prospective bidders have access to the same information.

VII. ELIGIBLE SERVICES STREAMLINING MEASURES

A. Software Updates and Patches, and Basic Technical Support, Should Be Classified As Internal Connections.

SECA is encouraged that the FCC is seeking comment to treat all software-based services including bug fixes, security patches and software-based technical assistance that are currently classified as Basic Maintenance of Internal Connections ("BMIC") in the same way they currently treat eligible Internal Connections software-based services, such as client access licenses.[18] These items would be permitted to be fully funded in the first year of a multiple year prepayment. While a step in the right

[18] *FNPRM,* ¶42

direction, SECA has additional recommendations that provide logical and needed clarity and simplification to this matter.

The FCC should reclassify software upgrades and patches, and fixed-cost basic remote technical support, as "basic technical support" under the internal connections category and remove these items from the current BMIC category. These items currently qualify for funding without regard to proof of use. In contrast the other types of BMIC -- repair and upkeep of eligible hardware; wire and cable maintenance; and, configuration changes — are eligible for funding only to the extent of actual work performed under the parties' agreement or contract. By removing software updates, security patches, and basic technical support from the current BMIC definition, this proposed revision will clarify that maintenance service is subject to the limitation that funding will be paid only when the applicant shows that the services were used.

Further, this redefinition will make it easier to resolve the different rules governing E-Rate funding of client access licenses, software updates, security patches, and basic technical support. Currently, client access licenses under the internal connections subcategory are eligible for funding of multi-year prepaid costs in the first year. Software updates and patches, and basic technical support and assistance, also sold as multi-year prepaid products, are eligible only to the extent of the costs incurred in the specific funding year. Currently applicants must pay for multiple years of Basic Technical Support in full (because this is the way in which the support is sold) and then use cost allocations to calculate the annual prediscount associated cost and apply for E-Rate funding in each of the years covered by the multi-year Basic Technical Support – a convoluted process which rarely is utilized because of how time consuming it is. By shifting the Basic Technical Support into the Internal Connections category, the rules for all prepaid licenses and Basic Technical Support can be more easily aligned and subject to the same regulatory treatment.

B. Managed Internal Broadband Services and the Remaining Features of BMIC Should be Merged into One Service Definition.

The remaining service under the existing BMIC category and Managed Internal Broadband Service (MIBS) categories heavily overlap, and the eligibility and classification rules have created widespread confusion, not only for applicants and service providers, but also for the administrator. Consequently, it has been a source of funding denials when applicants apply for a service they believed to be MIBS on their Form 471 application but did not include a MIBS service request on their establishing Form 470 and the same is true for BMIC.

To resolve this overlap and confusion, SECA recommends that there be one service category created as "Third Party Operation and Maintenance, and omit both the existing MIBS and BMIC definitions. By creating one category titled "Third Party Operation and Maintenance," and omitting the MIBS subcategory, all third party vendor services relating to configuration changes, ongoing operation, monitoring and maintenance of the network will be subject to clear and consistent definitions and regulatory treatment.

The following is a side-by-side comparison of the different types of work that may be performed by a third party vendor and qualify for E-Rate funding under the existing BMIC and MIBS definitions:

BMIC	**MIBS**
Repair and upkeep of eligible hardware	Third party operation, management, and monitoring of eligible broadband internal connections
Wire and cable maintenance	Management and operation of the LAN/WLAN, including installation, activation, and initial configuration of eligible components and on-site training on the use of eligible equipment
Configuration changes	Equipment may be owned by applicant or by vendor

It appears that the main differences between MIBS and BMIC are:

- BMIC does not allow network monitoring but MIBS does.
- Repair and upkeep services are explicitly part of BMIC and not mentioned in MIBS; but these services could be inferred to be part of management and monitoring of the eligible components of the network.

- Configuration changes are mentioned explicitly as part of BMIC and not mentioned in MIBS but seem to be included within the definition of operation, management and monitoring.

These modest differences can be most efficiently resolved by creating one service that includes most of the features associated with the third party services associated with the existing description.

The revised Third Party Operation and Maintenance of Internal Connections service should be described as:

> Third party service relating to eligible internal connections that may include some or all of the following:
> - Operation
> - Management
> - Monitoring
> - Repair and upkeep
> - Wire and cable maintenance
> - Configuration changes
>
> Eligibility limitations should be specified as:
>
> - All covered equipment must be listed in the parties' agreement.
> - The parties' agreement cannot include ineligible equipment unless explicitly listed and cost-allocated.
> - The covered equipment may be leased from the vendor or owned by the applicant. If leased from the vendor, the lease costs must be separated from the operation and maintenance costs and the lease costs of the equipment must be categorized as internal connections.
> - The specific services that the vendor will provide must be itemized in the parties' agreement according to the following categories:
>   - Operation and Management of eligible equipment
>   - Monitoring of eligible equipment
>   - Repair and upkeep of eligible equipment
>   - Wire and cable maintenance of eligible equipment
>   - Configuration changes of eligible equipment (after the initial configuration)
> - The agreement must itemize the labor cost for the scope of services and the vendor must keep detailed records of the work performed under the Agreement.
> - Reimbursement is limited to the associated charges for work performed.

SECA believes these modifications will simplify and clarify the eligibility of third-party vendor services for operation and maintenance of eligible internal connections, enable applicants to successfully apply for this service, and for the administrator to more efficiently review and process Form 471 applications.

C. Wiring Between Two Or More Buildings on a Single Campus May Qualify for Category 1 or Category 2 Funding.

SECA agrees with the Commission's suggestion of broadening the definition of "Internal Connections" to allow Category 2 funding for cabling between buildings on the same campus. The Commission's suggestion to remove the word "single" makes sense, but SECA would suggest replacing the phrase "single school" with the phrase "E-Rate eligible site(s)" to reflect library and tribal institutional inclusion.

Further, SECA agrees that while choice of category is good for applicants, the difficulties of seeking Category 1 service requests for these connections is a significant obstacle. While it is much easier to bid cabling under Category 2, there will be a significant trade-off by using limited Category 2 budget dollars when Category 1 funding is an option. Because the building to building cabling falls under the self-provisioned network definition, the applicant must issue an RFP and also request and consider bids for services provided over third-party networks. In contrast, these additional requirements are not imposed when bidding Category 2 cabling. SECA urges the FCC to lift these requirements for Category 1 service requests for self-provisioned networks when the cabling is for a connection between two buildings on the same campus.

We believe this relief should be limited to connecting two buildings of the same billed entity located on the same campus, and may not be used for connecting two buildings owned by two different billed entities, and therefore would preclude consortia from this modification of the self-provisioned network bid requirements.

This is a sensible solution that does not undermine competitive bidding or program integrity. The technical specifications of the cabling and labor for installation are the same whether bid under Category 1 or Category 2. Since the Category 2 projects do not require an RFP or consideration of other third party network services, this revision would achieve parity and enable applicants to use the Category 1 bidding process more easily.

D. The Bidding Requirements for Leased Dark Fiber and Leased Lit Fiber Should be Identical.

In addition to identifying specific eligible services streamlining measures, the Commission also invited comments on other eligible services improvements and whether there are competitive bidding-related requirements be updated or modified.[19]

SECA believes that the E-Rate rules and bidding requirements for leased dark fiber should mirror those currently in place for leased lit fiber. After receiving the overwhelming support from schools, state E-Rate experts, municipalities and carriers for the E-Rate eligibility of leased dark fiber, the FCC, in their *2014 Second E-Rate Order* equalized the treatment of dark and lit fiber beginning in funding year 2016."[20] In doing so, the Commission concluded that leveling the playing field between lit and dark fiber would expand service options for applicants and likely reduce costs for the Fund. However, in allowing E-Rate support for leased dark fiber, the Order imposed additional competitive bidding and bid evaluation requirements for leased dark fiber service requests, thus not truly equalizing the treatment of these two services.

First, applicants are required to seek bids for both leased lit and leased dark fiber simultaneously, and they must try to discern on the Form 470 which options to select in order to be compliant. Next, for leased dark fiber they are required to have a comprehensive RFP, which is not required for leased lit fiber service options, and is not required by FCC rules or regulations.[21] In the RFP

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[19] *FNPRM*, ¶¶ 58-59.

[20] *Modernizing the E-Rate Program for Schools and Libraries*; *Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, ¶¶ 30-42 (2014) (*Second 2014 E-Rate Order*).

[21] There is no mention of the RFP requirement in the *2014 Second E-Rate Order* which established the eligibility of leased dark fiber, or in the E-Rate regulations. The requirement appears on the USAC website. By its own admission, USAC acknowledges the RFP requirement is not in the rules. The website states:

> *Although the E-Rate rules do not specifically require applicants to prepare a separate RFP for any eligible service*, applicants seeking bids for leased dark fiber services or self- provisioned networks based on the Information required, will need to upload an RFP in EPC. Please see the FCC Form 470 user guide for additional information." (emphasis added). USAC FCC 470 RFP FAQ

and associated Form 470 narrative description, they are not allowed to mention that they prefer leased dark fiber, regardless of their prior experience with a pre-existing leased dark fiber contract, IRU, or their extensive research that had led them to this preference. [22] Finally, in their bid evaluation, they are required to compare the two service options, factoring in the duration of the agreement, the costs of modulating electronics, maintenance of fiber, IRUs, etc. [23] Although these additional requirements sound innocuous at first blush, they are intricate, complex and are very time consuming. Furthermore, they are subject to intensive scrutiny by PIA. Despite their best efforts to follow program requirements, applicants experience funding denials each year for non-compliance, and then face the prospect of having to pay 100% out-of-pocket for the special construction and monthly recurring service costs because they already signed a legally binding contract with a service provider.

Leased dark fiber is not a new technology and is ubiquitously offered. School and library officials with extensive knowledge of what services will best meet their needs should be allowed to select a specific broadband technology. They should not be required to seek and consider proposals for leased lit fiber when they have done their due diligence and have determined that this is not the best technology to meet their needs. Applicants who would like to receive proposals for both technologies can continue to have this option but it would no longer be mandatory to bid and evaluate both options.

Neither is the RFP requirement in an OMB approved form. The official OMB-approved Form 470 document, 470 Fields Approved by OMB specifies in Field 19

> User must indicate whether they are using an RFP. If an RFP is used, it must be attached so that it can be "released" with the posting of the Form 470. If one RFP covers both Category One and Category Two services, it will only need to be attached once.

This language does not compel the use of an RFP in any specific situation. It just says that if there is an RFP, it must be uploaded to EPC at the time the Form 470 is created.

USAC lacks the authority to establish this substantive requirement since it is not allowed to make policy, interpret FCC rules or the intent of Congress. 47 C.F.R. §54.702(c).

[22] "The applicant may not state that, although it is requesting bids for both types of fiber service, they would prefer leased dark fiber solutions over leased lit fiber solutions. FAQ 21, Eligible Fiber Services and Charges on USAC's Website, USAC Fiber FAQ 21

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[23] *Id.*at FAQ 30.

The *Second 2014 E-Rate Order* understandably took a measured and cautious approach regarding dark fiber eligibility to ensure that its addition to the E-Rate program would not have a negative impact on funding demand and would be funded only when cost-effective. But concerns the Commission had related to the impact on the Fund were not borne out. Yet, the bidding requirements have led to annual funding denials -- often based on technical infractions -- and not because the service is excessively priced. We implore the Commission to remove the additional bidding requirements for leased dark fiber, beginning with FY 2024, such as bidding leased lit fiber in the same procurement, and issuing an RFP since the RFP requirement is not authorized by FCC order, regulation or an approved OMB form. Doing so will level the playing field for these two technologies and comport with the Commission's desire to maintain technology neutrality.

VIII. THE COMMISSION'S PROPOSED SOLUTIONS FOR IMPLEMENTATION OF TRANSITION OF SERVICES SHOULD BE ADOPTED.

The Commission seeks comments on how to handle the transition of services in paragraphs 45-46 of the *FNPRM.* SECA has long requested that guidance be provided for applicants who anticipate the transition of services between funding years, and we welcome the opportunity to comment on the subject. The current lack of written guidance has created a situation where applicants depend upon informal guidance from other E-rate stakeholders, to try to discern how they should file their Form 471 applications and post-commitment changes to true-up their approved funding after a delayed transition has occurred. SECA encourages the FCC to provide formal directions on how to handle the applications filing for new services that may experience a delay when transitioning services.

A. Post-Commitment SPIN Changes and Split FRNs Should Allow Monthly Prediscount Increases When Supported by the Applicant's Documentation.

The *FNPRM* queries if there "should there be an exception to the service substitution policy and allow for increases to pre-discount costs for transition of services." SECA agrees that applicants should be allowed to split FRNs and change vendors during the post-commitment service substitution/SPIN

change process to implement delayed transition of service, and it further recommends that applicants be allowed to seek additional pre-discount funding to account for the actual costs incurred due to the transition. The Commission's current service substitution rules require that post-commitment service substitutions be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service. While in most instances this would be the only fair way to implement substitution requests, this is not the case when accurately assessing the actual costs applicants face when transitioning services.

To provide the utmost flexibility, we believe that it would be valuable for applicants to be permitted to also apply for funding based on the higher cost service during the transition period, citing the new vendor's SPIN and contract record. In this situation the applicant would then file for a SPIN change and split FRN during the post-commitment process once the transition date of the new service is known.

Transition of services can be challenging and the specific circumstances surrounding any given applicant's transitional needs may lead to one solution proving to be more ideal than the other on a case-by-case basis. In either scenario, we believe no further explanation should be necessary than that this substitution is required to properly implement the transition of services. In fact, the service substitution request form could be modified to include a check box or other field that indicates that transition of services is the reason for the substitution.

B. EPC Should Be Modified to Allow for Proration of Monthly Recurring Charges.

SECA strongly believes that EPC needs to be able to prorate service costs in a particular month. The turn-up date is rarely the first of the month, especially when transitioning services and/or implementing upgrades, but applicants are being forced to choose whether to request funding for the new services for the turn-up month or to request funding for the old services. In either case, the complete month cannot be fully funded when the transition of service occurs on any day other than the

first of the month because USAC will only fund 12 months of service, and there can only be one SPIN associated with each month of service costs. The applicant is left responsible in full for either the portion of new services or the portion of old services provided in that month. If this solution is not available then USAC must devise a process to approve a funding request from two different vendors for the same month reflecting the partial monthly costs incurred from each vendor.

As the *FNPRM* notes, based on prior years' data, implementing this procedural change is not expected to unduly increase the amount of funding requested. Accordingly, all service substitution requests based on the guidelines we describe here should be processed promptly.

IX. THE LEGALLY BINDING AGREEMENT REQUIREMENT SHOULD BE ADMINISTERED IN ACCORDANCE WITH PRIOR FCC ORDERS AND WAIVERS.

In its *First 2014 Modernization Order,* the FCC modified the signed contract requirement to allow more flexibility because "there are many instances where applicants have an agreement in place with their service provider or are already receiving services, but have difficulty obtaining signatures prior to the submission of their FCC Forms 471."[24] Acknowledging that waivers of the requirement have been consistently approved when there is evidence of a legally binding agreement, the FCC revised the rule to state that a contract or other legally binding agreement must be in place prior to filing their Form 471 applications effective in FY 2015.[25]

The Commission then provided two examples of evidence of legally binding agreements:

> For example, a bid for the services that includes all material terms and conditions provided in response to an FCC Form 470 would be sufficient evidence of an offer and an email from the applicant telling the service provider the bid was selected would suffice as evidence of acceptance. In addition, after a commitment of funding, an applicant's receipt of services consistent with the offer and with the applicant's request for E-Rate support will also constitute evidence of the existence of a sufficient offer and acceptance.

[24] *2014 First E-Rate Order* at ¶ 203.
[25] *Id.*

The Commission then clarified that verbal offers and/or acceptances would not be sufficient to establish a legally binding agreement.

SECA and the Joint Commenters' initial comments in the E-rate Tribal NPRM asked the FCC to approve another example of evidence of a legally binding agreement: when the applicant's governing board of directors approves and accepts the vendor's written offer. The written documentation requirement is satisfied via the minutes of the board's action along with the vendor's written offer. We believe this approach suffices to meet the standard. The *FNPRM* also asked for other examples and whether the legally binding agreement requirement should be eliminated altogether as suggested by ALA.[26]

SECA suggests that an appropriate way to address other situations including those instances where the applicant may have relied on the vendor's offer but did not formally communicate with the vendor prior to submitting their Form 471 application is to build on the FCC's guidance in the *2014 First E-Rate Order.* If the applicant has conducted their bid evaluation and internally selected a vendor's proposal, they should be permitted to communicate their formal approval of the vendor's offer after the Form 471 application has been submitted. This could be shown by a written communication (either letter or electronic) accepting the bid, board approval of the bid, or a purchase order for the services/equipment in question. The contract award date would be the date the bid evaluation was conducted and the service provider was selected. The fact that the acceptance documentation or contract documentation is dated after the Form 471 application submission date should not be a fatal mistake that results in a funding denial.

This approach is consistent with the Commission's 2008 decision in the *Adams County School District 14, et al. Order* in which waiver of the signed contract requirement was approved for 72 petitioners for various reasons, but in each instance, the petitioner showed they had a legally binding

[26] *FNPRM* at ¶ 57.

agreement in effect when they filed their Form 471 applications.[27] In a companion case in 2008, the Commission approved 18 additional contract waiver requests including contracts signed after the Form 471 certification date.[28] This waiver standard has been upheld in more recent appeal cases which included numerous instances of contracts having been signed after the Form 471 certification date.[29]

SECA believes the contract or legally binding agreement requirement is a protective measure for applicants to ensure they have the sufficient documentation to bind vendors to honor their price quotes and proposals, and therefore, would prefer that the requirement be retained but with more flexible parameters as explained above. These provisions serve as a safety net for applicants that selected the vendor, intended to be legally bound, but did not notify the vendor via email or writing, or obtain a signed written agreement prior to the Form 471 being submitted.

X. PREFERRED MASTER CONTRACTS SHOULD BE ESTABLISHED.

The *First 2014 E-Rate Order* delegated authority to the Wireline Competition Bureau to designate preferred master contracts ("PMC") for Category 2 equipment so as to encourage applicants to leverage these bulk buying opportunities.[30] To date, this measure has not been implemented to SECA's knowledge perhaps because these PMCs were required to be available nationwide. SECA proposes that the FCC remove this nationwide coverage requirement. Numerous state-level master contracts offer competitive pricing and should be allowed to qualify as PMCs.

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[27] *See Requests for Waiver of the Decision of the Universal Service Administrator by Adams County School District 14, et al*, CC Docket No. 02-6, FCC 07-35, ¶ 9 (2007).
[28] See, e.g., *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District et al.*; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 23 FCC Rcd 15526, 15529-30, para. 7 (WCB 2008).
[29] *Requests for Review and/or Waiver of the Decisions of the Universal Service Administrator by Amphitheater Unified School District 10 et al.*; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 28 FCC Rcd 7536, 7536-37, ¶ 2 (WCB 2013); *Requests for Review and/or Waiver of the Decisions of the Universal Service Administrator by Animas School District 6 et al.*; Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 26 FCC Rcd 16903, 16903-16904, ¶ 3 (WCB 2011).
[30] *First 2014 E-Rate Order,* ¶¶ 170-176.

Specifically, the following procedures for qualifying these contracts and instructions to applicants for using these contracts should be implemented:

1. Consistent with the *First 2014 E-Rate Order,* these contracts should be qualified for E-Rate whenever they have been entered into after complying with the applicable state bidding requirements. The Form 470 bidding process may also be used but should not be a prerequisite.
2. Interested stakeholders should be advised of what Information is required to request prequalification and how long it will take for the review to be completed once all the required Information has been submitted to the Bureau.
3. A list of the qualified preferred master contracts shall be required to be published on the USAC E-Rate website with Information about which categories of applicants and in which jurisdictions the contract is available, and how to access more detailed Information about each master contract (such as a hyperlink or name and contact information).
4. It should not be mandatory for applicants to use the preferred master contract either as their sole bidding vehicle or be required to include preferred master contracts in their bid evaluations. Applicants must be given maximum flexibility to shape their procurement process.[31]

SECA believes these measures have the potential to greatly streamline the competitive bidding process in a manner that preserves program integrity and ensures that pre-discount prices are competitive and cost-effective.

XI. UNIFORM BIDDING EXEMPTIONS SHOULD BE ADOPTED FOR ALL APPLICANTS.

A. The Proposed Bidding Exemption for Libraries' Purchases of Less Than $10,000 of E-Rate Equipment Or Services Should Apply Also to Schools.

The *FNPRM* asks for comments on the American Library Association's (ALA) proposal "that small libraries requesting less than $10,000 in E-Rate funding should be subject to fewer competitive bidding requirements and less rigorous review during the application process by treating funding requests under

[31] Any mandate to use the master contract may be contrary to state law. For example, when the applicant has chosen to issue their own RFP and to require sealed bids, applicants may be precluded from considering any other prices from a state master contract.
FNPRM, ¶¶ 60-67.

$10,000 as *de minimis*.[32] Furthermore, the Commission asks several other questions on this proposal. For example, if such a proposal were to be adopted, what procurement safeguards are in-place to ensure the cost-effective purchases of E-Rate eligible services?

SECA believes there is considerable merit in the ALA proposal but only if the proposal is expanded to include schools. We believe that schools already have local procurement regulations in place to provide the safeguards needed to ensure their procurement of E-Rate eligible goods and services are conducted in an efficient manner that leads to reasonable, cost-effective prices. Regarding this issue, it is important to note that public schools are audited on an annual basis following the Government Accounting Standards Board (GASB) procedures. The GASB audit also includes a thorough review of a school's procurement policies and procedures.

SECA believes that the exemption should be based on pre-discount, and not E-Rate requested funding. This approach is the only way to fairly administer the exemption for all qualifying applicants regardless of their discount percentage. If based on requested E-rate funding, this provision would disproportionately benefit the applicants with the highest E-Rate discount percentages. Also, this is the same approach that governs the current exemption of $3,600.00 per year for Category 1 Internet service.

B. The Category 2 $3,600.00 Bidding Exemption Should Apply to Schools in Addition to Libraries.

In the *Tribal E-rate Order,* the FCC adopted the ALA's proposal to exempt libraries seeking E-Rate support for Category 2 equipment or services that total a pre-discounted amount of $3,600 or less in a single funding year, per library. SECA requests that the FCC expand this exemption to schools, for two reasons. First, smaller schools will benefit from this provision just as much as smaller libraries. Second,

[32] *FNPRM*. ¶50.

as mentioned and explained above, consistent program rules that govern all applicants will make training, outreach and administration of the program rules more efficient and reduce complexity.

SECA definitely supports allowing all applicants, including schools, to be able to take advantage of any *de minimis* amount for competitive bidding exemptions.. Just as the Commission is seeking to simplify and streamline the E-Rate program, we urge the FCC not to make special exceptions for certain classes of applicants. Consistent program rules that govern all applicants will make training, outreach and administration of the program rules more efficient and reduce complexity.

C. The Current Category 1 $3,600 Bidding Exemption for Internet Should Be Applied to All Category 1 Services and Equipment.

The current Category 1 exemption of the prediscount amount of $3,600.00 per year per building applies only to commercially available Internet services. [33] This restriction violates the Commission's long-stated policy to maintain neutrality in the purchasing of E-Rate eligible services. This restriction impedes the use of enterprise service-based pricing that commercial providers may offer to applicants, and it prevents applicants from taking advantage of services offered by state research and education networks. Thus, this restriction should be removed.

XII. A FIXED CATEGORY 2 FORM 471 WINDOW DEADLINE SHOULD GOVERN ALL APPLICANTS.

The FCC also requested comments on whether a rolling Category 2 window option or a second Category 2 Form 471 window deadline simplify or complicate the E-Rate program.[34] While the Commission has made many positive changes to the Category 2 program, this approach would complicate and not simplify the program, and be a source of confusion. Separate deadlines would likely lead to a deluge of appeals and/or waiver requests to USAC (and, eventually, the Commission) as

[33] *Modernizing the E-Rate Program for Schools and Libraries*. Report and Order and Further Notice of Proposed Rulemaking. WC Docket 13-184. July 11, 2014. ¶199.
[34] *FNPRM,* ¶ 48.

applicants, misunderstanding which deadline applies to which application type, seek relief from missed deadlines.

XIII. APPLICANTS SHOULD NOT BE OBLIGATED TO CONSIDER OR RETAIN GENERIC EMAILS AND DOCUMENTS FROM VENDORS THAT DO NOT MEET THE DEFINITION OF AN OFFER.

The *E-Rate FNPRM* invited specific comments on various questions and concerns that SECA along with the other Joint Commenters described in their April 24, 2023 initial comments to the *Tribal E-Rate NPRM* relating to the increasing number of auto-generated emails that applicants received from prospective vendors in response to Form 470 postings. Applicants already are required to specify the reasons for disqualification of proposals in their Form 470 and/or any related RFP documents. They are also required to specify in their bid evaluation the rationale for disqualification of bids as well as retain all bids in accordance with the E-Rate documentation retention requirements. Their failure to adhere to all of these requirements puts them at risk for funding denials and/or post-commitment funding rescissions and reimbursements.

Vendors on the other hand have little or nothing to lose by submitting an automated response purportedly labeled as a bid but does not address the specific requirements of the Form 470. Further, these responses may not confirm or verify that the product or service requested in the Form 470 can be sold to the applicant in the applicable geographic area. Yet, the applicant still has the burden of reviewing all these emails and listing in their bid evaluation documentation why the email is non-responsive and thus disqualified. These procedures relieve the service provider from any responsibility to prepare a meaningful bid. Meanwhile, applicants have to abide by stringent rules for conducting their procurements.

On initial review, this may not appear to be burdensome or onerous but this fails to consider the reality in the number of automated mass emails that applicants routinely receive. For example, one particular vendor generates the same automated email in response to every different separate request

for services listed in an applicant's Form 470. If and when the applicant updates any bid document, the same exact flurry of emails is generated. The vendor's email also has an attachment. Applicants are rightly suspicious of opening attachments from unfamiliar parties. Yet according to the current guidance issued by USAC, *each time* the vendor generates an email the applicant must consider the email as a bid and analyze it for compliance with the applicant's bid requirements stated in the Form 470. The same vendor also sends the same email with the same language for several consecutive days even though there were no changes made to the Form 470 during that period. This vendor practice is the equivalent of a "laundry list" bid which has already been forbidden as an applicant bidding practice.[35] A comparable prohibition is required to enforce fair bidding practices by vendors.

The sample language of this spam email is as follows (vendor's name redacted):

> My name is {redacted} with {redacted}. I found your eRate request for {applicant name}. I have attached a proposal that includes services you are requesting. If a provider has already been awarded, please disregard this proposal. If it is required that proposals be mailed in, please let me know the address and I can send it.

The attachment contains a solicitation to sell numerous services including blatantly ineligible services: Voice, Data Center/Cloud Center, Web Content Filtering, Managed Network (unclear if this is MIBS) plus Internet and MPLS fiber circuits.

With respect to Internet service and MPLS fiber, their fine print states, "Complex construction may require extra fees." In other words, their prices are for monthly recurring service and do not have a firm price that includes all relevant costs such as any one-time installation or special construction costs. This is not a bid.

[35] *Request for Review of a Decision of the Universal Service Administrator by Yseleta Independent School District, et al.,* CC Docket No. 96-45 *et seq.*, Order, FCC 03-313 (December 8, 2003). A Form 470 that lists each product and service in the Eligible Services List effectively compromises the integrity of the bidding process because the Form 470 did not provide sufficient detail to enable vendors to prepare their bids. A vendor should likewise be prohibited from submitting a generic price list containing all the services and/or equipment that they sell, that is not responsive to the applicant's specific needs listed on the Form 470.

Another vendor with a nationwide presence routinely submits “budgetary pricing” quotes that are not firm offers, and also exclude potential special construction charges. This vendor’s response often states, “Special Construction charges may be required when adding network infrastructure to ensure service delivery. When necessary, {vendor name} will request a network and facilities evaluation to determine any associated charges per site. These charges are not included in this quote but will be provided when applicable.” This, too, is not a bid.

An applicant cannot possibly rely on this vendor’s incomplete price quote to conduct a bid evaluation since there may be additional costs that would be incurred and these would have to be factored in the price calculation and overall bid evaluation. By submitting this partial budgetary pricing quote, the service provider has not submitted a genuine, complete bid that can be relied on by the applicant.

Still another vendor sends out an automated email with a list of services and prices for various ineligible voice services plus Internet and circuits which contains the following language:

1. Some services and pricing subject to final engineering.
2. All circuits require specific-needs interview with applicant. Your specific needs may impact pricing and terms.
3. Some services offered in conjunction with service partners.

In each of these automated email examples, an applicant cannot rely on the vendor’s price list or cannot be sure of the availability of service to score and compare the vendor’s prices and service with other, genuine bids proposed by other vendors. In none of these situations could the applicant enter into a legally binding agreement because none of these vendors has put forth a legal offer that a district superintendent or a school board would ever sign.

The Federal Acquisition Regulation has a definition of “offer” that SECA encourages the FCC to adopt to provide clear direction to all stakeholders participating in the E-Rate competitive bidding process. A bid must be considered and retained by the applicant when the communication meets the

definition of "offer" under 2 FAR §2.101. An "offer" must contain sufficient information that "if accepted, would bind the offeror to perform the resultant contract." 2 FAR §2.101. This basic and simple definition makes clear that a generic price list of services lacking specific prices and associated quantities requested by the applicant, reserving the right to add charges at a later time for special construction or non-recurring installation charges, or is contingent on the availability of facilities, is not a legal offer, and therefore, should not have to be addressed in the bid evaluation – either to be reviewed on the merits or disqualified due to failure to meet minimum requirements identified in the Form 470. These emails should also not be counted as bid responses when entering the contract record in EPC (which asks for the number of bid responses), nor should an applicant be at risk of a funding denial or rescission if they did not retain a copy of these emails.

There must be some responsibility assigned to vendors to prepare proposals that are responsive to the specifications of each Form 470. Such responses need to include firm prices to enable the applicant to conduct a fair bid evaluation, select the most cost-effective option and enter into a legally binding agreement before certifying their Form 471 application. Contingent form proposals and mass generated email responses are not bids and applicants should not have to treat them as such.

XIV. THE FORM 470 BID DEADLINE SHOULD PRESUMED TO BE 11:59 PM ET ON THE DAY BEFORE THE ALLOWABLE CONTRACT DATE UNLESS A LATER DEADLINE IS SPECIFIED IN FCC FORM 470 OR BID DOCUMENTS.

The Form 470 due date should be presumptively determined to be 11:59 pm ET on the day before the allowable contract date, when there is not a longer due date specified in the Form 470. USAC's recent guidance (not set forth in any official FCC order or regulation), now states that bids submitted after the Form 470 due date must still be considered until the Form 470 notification is sent to applicants. This is sent upon reaching the Allowable Contract Date (the 29th day after posting of the Form 470 with the posting date counting as Day 1) and states, "You may now close your competitive bidding process unless state and local procurement laws require you to keep the bidding open longer."

The existing regulation, 47 C.F.R. §54.622(g), entitled "28 Day Waiting Period" likewise states that the Form 470 Receipt Acknowledge Letter [the notice sent by the Administrator to the applicant following the posting of a Form 470] shall include the date after which the applicant may sign a contract with its chosen service provider(s)" which is 28 days after the posting date of the Form 470. This certainty is necessary so that applicants and service providers are aware of the computation of bid deadlines when the Form 470 is silent.

The current regulation creates several ambiguities that should be resolved by revising the regulation as follows:

> ***28-day waiting period.*** After posting the documents described in paragraph (f) in this section, as applicable, on its website, the Administrator shall send confirmation of the posting to the applicant. The deadline for proposals is 11:59 PM Eastern Time on the 28th day from the posting date of the Form 470 (with Day 1 being the Form 470 posting date) unless a later date is specified in ~~i~~ts competitive bidding documents ~~are~~ posted on the Administrator's website. ~~before selecting and committing to a service provider.~~ The confirmation from the Administrator shall include the date after which the applicant may sign a contract with its chosen service provider(s) which shall govern unless the applicant has specified a different bid deadline that is longer than the 28 day waiting period.

This approach is preferred over a modification to the Form 470 to add a field to allow applicants to indicate the deadline for submitting bids and any other requirement that will result in a bid being disqualified from consideration, for two reasons. First, the narrative text boxes on the Category 1 and Category 2 service descriptions already require applicants to specify the grounds for disqualification. Second, there may be some instances where the applicant may want to consider all late submitted bids until the time that the applicant undertakes their bid evaluation. This is particularly relevant for applicants in rural or remote areas where they may not receive any bids by the bid deadline but do receive late bids. They would want to be able to consider those late bids and not have to start anew with another Form 470 posting. If the Form 470 requires the applicant to specify that bids submitted after the deadline are disqualified, then all flexibility and discretion is removed for the applicant to waive the bidding deadline.

Likewise, SECA is concerned that USAC is requiring applicants to consider bids that are submitted after the Allowable Contract Date but before the actual bid evaluation has been conducted when the bid deadline is not stated on the Form 470. We are aware of a sizeable USAC audit finding and Commitment Adjustment Order for Loudoun County School District of more than $700,000 due to the applicant's disqualification of two bids received after the Allowable Contract Date but before the bid evaluation was conducted. While the applicant's appeal was approved, it was only because of the particular facts and circumstances of the case and seems to uphold the finding that the late bids should have been evaluated.[36]

There are many reasons why schools do not conduct bid evaluations on the first day they are permitted to do so (the Allowable Contract Date), yet this does not mean that applicants should be required to keep open their bidding window. Further, there is no uniform definition of what is considered a bid evaluation. Is this the date the vendor is selected, the date the technology director completes the bid evaluation form, the date the procurement officer begins to research references, or the date the applicant opens the bids? The answer is that it can be any of these or others. We ask the Commission to direct USAC not to continue to require applicants to consider such late submitted bids, and certainly to not treat these as audit findings or improper payment findings pursuant to a Payment Quality Assurance review, and subject applicants to funding recovery actions.

[36] The audit finding and COMAD amounted to $736,662.50, and found that the applicant's failure to consider and evaluate two bids received after the Form 470 allowable contract date was a competitive bidding violation. On appeal, the Wireline Competition Bureau approved the appeal by waiving 47 C.F.R. § 54.511(a) because the applicant still selected the lowest-priced offering even if it had not disqualified the two bids. This outcome seems to confirm that USAC's conclusion that the late bids should have been considered on the merits and not disqualified. *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 06-122, DA 21-1457 (WCB)(November 30, 2021) at n. 10.

XV. A COMPETITIVE BIDDING PORTAL WILL NOT MITIGATE SPAM EMAILS OR SUBMISSION OF LATE BIDS.

In seeking to clarify the scope of issues and concerns regarding automated emails sent by vendors, and late submitted proposals after the 28th day from the Form 470 posting date, the Commission asked whether these concerns would be mitigated should the competitive bidding portal be established. Neither concern will be addressed and, in fact, the portal may exacerbate these problems.

The submission of repetitious automated communications from vendors in the portal will complicate the competitive bidding review process and will not alleviate this problem. A PIA reviewer could easily see the multitude of communications and count each communication as a separate proposal and challenge an applicant whose bid evaluation did not list each and every separate communication. This will generate even more inquiries from PIA to ask the applicant to explain these omissions and detract from the substantive review of the application. The only way the issue of automated, non-responsive communications will be mitigated, as stated above, is for the FCC to issue an unequivocal message that puts vendors on notice that repetitious "cookie cutter" emails are not legitimate bids and may be disregarded by applicants.

Similarly, the submission of late bids in the portal past the 28th date from the Form 470 posting date will not in and of itself resolve the question of whether these bids must be evaluated on the merits. The FCC must issue a clarification concerning the default bid deadline if the procurement documents are silent. The portal will not resolve this issue.

XVI. STREAMLINING E-RATE PROGRAM FORMS AND E-RATE PRODUCTIVITY CENTER WILL BENEFIT STAKEHOLDERS AND IMPROVE THE ADMINISTRATOR'S EFFICIENCY

The *FNPRM* asked whether modifications to the Form 470 application would reduce confusion for both applicants and service providers, could the Form 486 be eliminated and the information

collected on that form be transferred to the Form 471 application, and are there any other form changes that could streamline the program.[37]

SECA believes that stakeholders would benefit greatly from modifying the Form 470 and 471 to be written in a more comprehensible manner and use more plain language, and more common and consistent terms and definitions rather than rely on language that is confusing and ambiguous. Despite several attempts to clarify the Form 470 service request descriptions for both Category 1 and Category 2, confusion still remains. Applicants ultimately are penalized with funding denials due to not selecting the correct service request on their Form 470s. Although changes for the sake of changes are not to be encouraged, changes that result in ease of understanding and more successful filing are worthwhile and should be implemented. We believe these changes would benefit both the applicant community as well as service providers who seek to submit bids that meet the needs of the applicant.

SECA intends to prepare comprehensive and specific language and format changes to the Form 470 and Form 471 applications in replies to initial comments after reviewing and considering the recommended changes proposed by other parties in their initial comments. For now, these initial comments contain our policy positions in response to the specific questions that the FCC set forth in the *FNPRM.* Since the EPC filing system is inextricably linked to the forms, this discussion must include changes to EPC to improve the system functionality and ease of use.

1. Resources that would otherwise be required for developing an "EZ" version of Form 470 should instead be applied toward revising the Form 470 to make it accessible and easy to use by all applicants and understandable by potential bidders. Creating a separate version of the Form 470 will divert resources from fixing the problems with the existing Form. We also believe that having multiple versions of the same form - a "regular" version and an "EZ" version will only result in confusion with applicants potentially choosing to complete the wrong type for their circumstances.

[37] *FNPRM*, ¶¶ 60-67.

2. The three Category 2 subcategories on the Form 470 should be eliminated, and all service and equipment should be listed as drop down options under the Category 2 area of the Form 470.[38] As noted above, SECA recommends that the Basic Technical Support and Operation and Maintenance of Internal Connections become separate Category 2 service options to be included under Category 2 service requests. There is no longer any need to require the applicant to first designate whether a service request would be under Internal Connections, MIBS or BMIC. The separate subcategories cause confusion resulting in funding denials and rescissions when applicants do not select a service request in the subcategory that is then listed in their Form 471 application.

3. The Form 486 should be eliminated and the CIPA compliance information should be collected instead on the Form 471 application, consistent with the recommendations set forth in SECA's comments to the *Tribal E-Rate NPRM.* The Form 486 is another potential point of failure for applicants and its elimination will benefit applicants and be another step forward in program simplification. Service providers, too, will benefit by knowing that the approved funding in a Funding Commitment Decision Letter has been confirmed to be effective as of the first day of the funding year, and therefore, will not have to await the Form 486 confirmation letter to begin providing E-Rate credits on bills for those applicants who selected the discounted billing option.

4. Forms revisions also will require improvements and efficiencies in the way in which EPC operates. EPC was initially devised as a modification to an "off the shelf" software program that was not designed specifically for E-Rate. Since then, some of the more awkward features have been modified to become more user friendly but there remain several clumsy system limitations that should be resolved in order to better meet the needs of applicants. SECA members routinely submit suggestions to USAC for EPC improvements but the prioritization process typically is an internal USAC matter. We therefore ask the Commission to acknowledge the importance of these recommendations and direct USAC to make the following changes to EPC:

    A. Modifications to the contract module are needed to allow applicants to update and amend contract records to upload amendments and extension documents, which would eliminate

[38] The BMIC subcategory was first created on the Form 470 and Form 471 when the Commission enacted the "2-in-5" rule for the receipt of funding for internal connections. Each applicant was limited to applying for internal connections funding in two of every five years. BMIC was not subject to this restriction and could be requested for funding in each year. Accordingly, the FCC revised Form 470 and Form 471 to create a separate Category 2 subcategory. When Managed Internal Broadband Services (MIBS) was deemed eligible in 2015, the service was added as a separate subcategory presumably modeled after the maintenance subcategory on these forms.

many PIA inquiries asking for contract extension documents, and also allow for SPIN changes to contract records when service providers change SPINs via sales, mergers, reorganizations and consolidations.

B. There currently is a requirement for applicants using the bidding exemption for commercially available broadband Internet option to complete the contract module which seeks information about the Form 470 posted, number of bids received, contract award date, etc. All this information is extraneous for these FRNs and either the contract module requirement should be eliminated for these FRNs or modified to collect only the necessary information concerning the particular contract in question.

C. When applicants experience a delayed transition of service, the cutover date from when the old service ends and the new service begins may occur on a day other than the first day of the month. Applicants are forced to forego funding for those partial months of service since the system will not and cannot prorate monthly costs so that partial monthly costs may be associated with different vendors. (See our comments below on this issue.)

D. The functionality to add and remove Users from an EPC profile must be improved. Currently there is no ability for an EPC account administrator to remove or deactivate an existing User from the Manage Users/Add/Remove Users page. It is everyone's interest to make updating these profiles as efficient as possible to as to ensure that access to EPC is available only to authorized users. Users who are no longer authorized to access a billed entity's EPC account should be promptly removed or deactivated.

E. Consortium BENs should be allowed to access and update the profiles of the buildings of each consortium member during the Administrative Window. Currently EPC does not allow for the consortium lead to access their members' building profiles. This is a system limitation, not a requirement in the FCC's orders and regulations. In fact, the letters of agency executed by consortium members to authorize the consortium BEN to file Form 471 applications already contain the necessary permissions. Since the EPC profiles of each building are incorporated into and numerous components of each building's profile appear on the Consortium Form 471, it follows that the consortium lead should be authorized to update and revise the profiles to ensure that the consortium Form 471 application is accurate and correct.

There are two significant reasons why allowing consortium leads to update the profiles of their members' buildings would be a huge streamlining measure:

(1) The consortia discount validations would be streamlined by ensuring that all discount information was updated in accordance with applicable requirements before the Form 471 application was submitted and certified. Currently, any changes to discount and entity information of consortium member buildings must be submitted through the tedious RAL correction process which significantly delays the processing of consortia Form 471 applications. Also, there are numerous discount validations that consortium leads are required to undertake each year when their members' discount information is outdated and that also delays the issuance of consortium FCDLs. Further, consortium leads are at risk for discount modifications and funding modifications either during PIA review or post-commitment if the discounts of their members are modified after the Form 471 application is submitted. Each year USAC implores applicants to file applications that are as accurate as possible but consortia leads are unable to do so because of this EPC limitation.

(2) The name and address of buildings in consortium member school and library profiles may not match official records including the information in master contracts and vendor bills. These mismatches lead to PIA pre-funding review delays, and extensive post-commitment invoice reviews. Consortia leads risk invoice denials and reductions when there is a mismatch between the name and address of buildings in EPC profiles and the information in the contract records and vendor bills. The consortia BENs need to be able to submit these corrections and updates directly in EPC rather than have to hound and nag the individual consortium member – who may or may not file for their own E-Rate discount funding – to make these updates in EPC.

This limitation may have been necessary when EPC was first built but it is long overdue for this functionality to be updated and for this restriction – which is not grounded in FCC regulation or Order – to be lifted. It seems that this capability could be enabled whenever a billed entity is linked as a consortium member to a consortium

in EPC. In any event, we are confident that once the FCC directs USAC to resolve this matter, a solution can be devised and implemented.

XVII. FCC FORM 479 CIPA COMPLIANCE FORMS SHOULD ALLOWED TO BE MULTIPLE SUBMISSIONS.

The CIPA statute, 47 U.S.C. §254 (h)(5)(E)(ii) and §254(h)(6)(E)(ii) prescribes that each school and library that receives E-Rate funding for Internet and/or internal connections must certify their CIPA compliance to the Commission "during each annual application cycle." See also 47 U.S.C. §§254 (h)(5)(A)(i)(I) and (II) 254(h)(6)(A)(I) and (II).

The statute does not prescribe any specific requirements for consortium members to certify their CIPA compliance in connection with consortia applications. Accordingly, the Commission enacted regulations and designed the Form 479 to be used for consortium members to certify CIPA compliance to the lead consortium member who is the billed entity – not the Commission. The lead consortia member must then certify to the Commission on the Form 486 annually concerning the status of the members' CIPA compliance.

The key requirement is that each consortia member must have certified their compliance with CIPA in each program year prior to the consortium BEN's submission of Form 486 for Internet and internal connections FRNs.

There is no statutory requirement that mandates that the CIPA Form 479 must be collected *separately each year*. This requirement was established by FCC regulation and when the FCC wrote the instructions and created the CIPA Form 479.[39] A revision to the Form 479 instruction to remove the requirement that the form must be completed for only one funding year, and may include multiple funding years, would allow this change to occur. We believe that this change does not require an

[39] 47 C.F.R. §54.520(b)(1) and (c)(3).

amendment to the CIPA regulation at 47 C.F.R. §54.520 since the multi-year Form 479 would enable the school or library to certify their compliance in each of the funding years listed on the form. To be clear, we believe that the word "in" is synonymous with the word "for" in these instructions and in the CIPA statute and regulations; Form 479 necessarily must be collected prior to the funding year, so that the consortium BEN can immediately certify the Form 486 upon receipt of funding approval.

This change would be a huge time savings and streamlining measure for the many consortia that file for Internet and/or internal connections on behalf of school and library members, and who must tediously collect these forms annually. This process is time consuming which could be shortened without compromising program integrity by allowing the form to be a multi-year form. This would not alter the documentation requirements concerning each member's ability to establish and prove their compliance with the CIPA statute but it would significantly reduce the administrative burden these forms place on consortia leads, much as the ability to collect multi-year Letters of Agency does.

Alternatively, if the existing Form 479 cannot be adapted to allow a multi-year functionality, we urge the Commission to specifically authorize consortia members to complete annual forms for several years in advance of the upcoming funding year. For example, when the consortium member executes a letter of agency for a given number of years, the member could also submit the annual Form 479 for the same given number of years.

XVIII. INVOICING STREAMLINING MEASURES SHOULD BE ADOPTED.

A. Invoice Reminder Notices Ordered in the Tribal Report and Order Should be Augmented with an "Urgent Reminder" Letter that Allows Applicants to file their Invoices or Obtain an Automatic Invoice Extension Within 15 days of the Date of the Notice Without Having to File A Waiver Request with the FCC.

SECA supports the FCC's direction that invoicing reminders be sent to all registered users in EPC for funding requests with no disbursement activity three weeks prior to the invoice deadline. By sending the reminder to all registered EPC users, the message hopefully will receive maximum visibility. This will

improve the chance that the notice will come to the attention of an active employee or contractor associated with the billed entity, and who will be empowered to act. At the beginning of each school year, there is regular turnover and reassignment of E-rate responsibilities to new personnel. The new personnel may be unfamiliar with E-rate program deadlines and the requirement to register in EPC to be able to submit forms. This reminder will be invaluable to help the applicant recoup their E-rate discount funding for the prior year.

Based on the same rationale, SECA also recommends that an urgent reminder letter be sent to all registered EPC users after the BEAR deadline has passed for which there was not a BEAR or SPI filed for a funding request. The urgent reminder should provide for a 15-day grace period to cure and allow for the submission of an invoice by the 15th day from the date of the notice, without requiring the applicant to seek a waiver from the FCC.

For those applicants that missed the deadline and are unable to file their invoices within 15 days of the urgent reminder letter, we recommend the Commission delegate authority to the administrator to grant automatic invoice deadline extensions for requests submitted within 15-days after the original deadline. The extension would be 120 days from the date of the original deadline. Requests for invoice deadline extensions later than the 15th day from the date of the urgent reminder letter would require submission of an FCC request for waiver.

B. USAC's Authority to Grant Appeals of Zero Paid Invoices or Reduced Invoice Payments and Allow For Resubmission of the Invoice Without Requiring the Submission of a Request For Waiver of the Invoice Deadline Should be Codified.

Flexibility in approving appeals to enable refiled invoices when there is a zero paid decision or reduced payment decision on a timely filed invoice is also appropriate. There is an informal policy that we are not aware of having been codified that allows the administrator to grant appeals of these types of BEAR decisions and provide the applicant (or service provider) additional time to resubmit a corrected invoice (BEAR or SPI). This procedure should be formalized, and in accordance with the current invoice

regulation, the appeal should result in the issuance of a revised funding commitment decision letter and provide for an additional 120 days to submit a new invoice.[40]

C. The Regulatory Provisions for Discounted Billing and Submission of SPIs Should be Clarified.

SECA believes that service providers who provide discounted bills are obligated to only bill the applicant the non-discounted portion of the E-Rate eligible costs for the service or equipment, and then bill USAC for the associated discount funding.[41] Vendors should not be permitted to bill the applicant in full and then also bill for the discounted amount of the bill and then reflect the reimbursement as a credit on the next monthly bill. This approach results in double billing both the applicant and USAC for the discounted amount of the monthly bill, which is not consistent with the invoice regulation. A clear statement from the FCC that this practice is not allowed under E-Rate regulations would be helpful to eliminate this behavior.

XIX. DISMISSALS OF APPLICATIONS AND FORMS WHEN AN APPLICANT OR SERVICE PROVIDER IS PLACED ON RED LIGHT SHOULD BE CHANGED AND THE FORMS SHOULD BE PUT ON HOLD PENDING RESOLUTION OF THE RED LIGHT ISSUE.

SECA agrees the Red Light rule should be modified to place a hold on, and not dismiss, pending applications when an applicant or service provider is placed on Red Light. This procedure would enable the affected stakeholder to investigate and resolve their status without risking the loss of valuable E-Rate funding.

There are numerous instances of stakeholders being reported as being on Red Light when in fact they should not have been. USAC mistakenly has sent correspondence advising the stakeholder that

[40] 47 C.F.R. § 54.514 (a)(3).

[41] The instructions to the FCC Form 473 historically have required the service provider to first bill the applicant for only the amount not paid by E-Rate, and then request reimbursement of the E-Rate discounted portion. If the service provider bills the applicant for the full amount of the bill and then also seeks reimbursement of the E-Rate discount funding from USAC, the service provider is going to be paid twice of the discounted billing amount of the monthly bill.

they must resolve the Red Light status or their pending applications may be denied. By placing a hold on the pending applications rather than dismissing them, the stakeholder has a more streamlined opportunity to resolve the issues and enable their applications to advance.

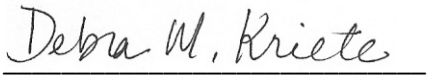
XX. THE E-RATE CONSORTIUM DEFINITION SHOULD BE UPDATED.

The current E-Rate definition of "consortium" refers to private sector participants needing to have pre-discount interstate services at tariffed rates. This requirement may have been relevant 20 years ago but now is very outdated. To address this, the Commission recommends that the E-Rate definition of "consortium" remove this requirement. Doing this will then make the E-Rate definition of a "consortium" the same as the definition used in the Emergency Connectivity Fund (ECF) program. SECA very much concurs with the FCC's recommendation.

XXI. CONCLUSION

The State E-rate Coordinators' Alliance respectfully requests the FCC to adopt a Report and Order consistent with the recommendations set forth in these initial comments.

Respectfully submitted,



Debra M. Kriete, Esq.
Chairperson
State E-rate Coordinators' Alliance
1300 Bent Creek Blvd, Ste 102
Mechanicsburg, PA 17050
717 232 0222
Dmkriete@comcast.net

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