

**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

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

Table of Contents

- I. INTRODUCTION 1
- II. THERE IS CONSENSUS AMONG PARTIES REPRESENTING BOTH APPLICANTS AND SERVICE FOR SEVERAL STREAMLINING MEASURES THAT THE FCC SHOULD ADOPT. 1
- III. THE SPI INVOICE PROCESS MUST BE ENFORCED AND APPLIED AS DIRECTED BY THE FCC REGULATION..... 2
- IV. BIDDING CLARIFICATIONS SHOULD ENCOURAGE SERVICE PROVIDERS TO SUBMIT TIMELY AND RESPONSIVE BIDS, AND NOT MANDATE THAT APPLICANTS HAVE TO ADDRESS NON-RESPONSIVE AND LATE SUBMISSIONS. 4
 - A. Introduction 4
 - B. Discussion of FCC Form 470 Bidding Deadline Options..... 5
 - C. A Deadline for Completing Bid Evaluations Is Already in Effect and Is Not Needed. 6
 - D. Consortia Must Follow The Same Competitive Bidding Requirements as Other E-rate Applicants..... 8
- V. SECA RECOMMENDS MODIFYING THE CATEGORY 1 INTERNET AND DATA TRANSMISSION SERVICE REQUEST DESCRIPTIONS TO CLARIFY AND DEFINE EACH SERVICE IN ACCORDANCE WITH THE LANGUAGE OF THE ELIGIBLE SERVICES LIST. 9
- VI. ANALYSIS OF HISTORIC DISCOUNTS FROM OPEN DATA SUPPORT SECA’S RECOMMENDATION THAT APPLICANTS SHOULD HAVE THE OPTION TO USE THE SAME DISCOUNT PERCENTAGE FOR FIVE YEARS..... 10
- VII. CONCLUSION 12

I. INTRODUCTION

The extent to which there is consensus among the parties in support of various streamlining measures in the Further Notice of Proposed Rulemaking is encouraging and illuminating. The parties' initial comments have a common theme that clarification in various aspects of the E-rate program will streamline and simplify the E-rate program.

Clarity of the E-rate rules and requirements fosters compliance whereas ambiguity and uncertainty lead to misunderstanding and mistakes. The proposals in our initial comments and these reply comments seek more thorough and detailed explanations of the existing program requirements to remove ambiguities, condensing the form filing requirements whenever possible to be more efficient, and, improving the design of the FCC forms and implementation of these forms within the E-rate Productivity Center to enable applicants and service providers to submit complete and accurate data to USAC.

II. THERE IS CONSENSUS AMONG PARTIES REPRESENTING BOTH APPLICANTS AND SERVICE FOR SEVERAL STREAMLINING MEASURES THAT THE FCC SHOULD ADOPT.

In general, the consensus among the parties' initial comments is far more extensive than the areas where they differ. The following reform measures are supported by the parties who addressed the topic in their initial comments. SECA did not observe any party that oppose the following measures:

1. Elimination of FCC Form 486 and inclusion of CIPA compliance certifications on FCC Form 471.
2. Allowing mid-year bandwidth increases to better meet applicants' needs.

3. Purchasing internet from two different vendors that will be used during the funding year is not duplicative or redundant services and should be allowed.
4. Clarification of the definition of cardinal changes to bidding documents is needed and should be eased.
5. Procedures for delayed transition of service should be established.
6. All multi-year licenses, including technical support and software updates, should be eligible for funding in the year of purchase for the multi-year eligible costs.

III. THE SPI INVOICE PROCESS MUST BE ENFORCED AND APPLIED AS DIRECTED BY THE FCC REGULATION.

AT&T contends that the FNPRM raises a novel interpretation of the SPI billing and regulation by requiring service providers to provision discounts on a customer's bill before submitting the E-rate discount funding for reimbursement to USAC. SECA disagrees and believes that any other approach to SPI billing, where the customer is required to pay up front and then only after the vendor receives reimbursement from USAC do they provision the billing credit, is a violation of the E-rate invoice billing regulation.

The entire purpose of the SPI process to relieve applicants from the burden of having to pay the full bill up front, particularly when they lack the resources to do so. AT&T's approach does not relieve applicants from this burden.

Further, AT&T claims that this process has been in effect for years without objection from applicants. We disagree and hear complaints from applicants regularly that this method of discounted billing is unfair and becomes an accounting headache. Further, AT&T's statement suggests that applicants have a voice or say over this practice. In fact, applicants are at the

mercy of service providers for discounted billing of E-rate services and equipment. AT&T is not going to change its practices or grant relief to an applicant who may object to having to pay up front and then later receive a billing credit for the prepaid E-rate discount funding.

Further, the claim that this practice is sanctioned due to its longevity is called into question by the Petition for Clarification, or in the Alternative, Waiver filed on July 23, 2003 in CC Docket No. 02-6 requesting that the Commission approve this billing practice.¹ To SECA's knowledge this Petition has not been ruled upon and therefore, is not a matter of settled practice that was approved by the Commission.

While the billing practice raised by AT&T should be clarified, SECA concurs that AT&T does at least offer a form of discounted billing whereas we hear complaints from applicants regularly whose vendors will not offer discounted billing. These vendors are clearly in violation of the FCC regulations and because there is no effective enforcement mechanism, have had no consequences for years. Advising these applicants to make discounted billing a bid disqualification factor is not helpful because in many cases, the vendor is the only provider of those services in the area and the applicant must purchase services from the vendor.

Given that it has been more than 25 years that these vendors have had to modify their billing systems, it is long overdue that the SPI billing option be enforced, and applicants truly be given the option to receive discounted bills once their funding approval has been received. If the FCC eliminates the Form 486, there will be no additional hurdle or step for service providers to receive the confirmation that their SPI forms will be processed once they reflect the E-rate discount credit on their customers' bills and submit for E-rate reimbursement.

¹ <https://www.fcc.gov/ecfs/search/search-filings/filing/5509438818>

SECA also is suggesting that an optional field be created on the FCC Form 471 for applicants to choose discounted bills or the BEAR method of reimbursement. This information also should be useful to vendors as they establish their billing for each approved FRN they receive in a given funding year. This was the practice for the ECF forms and worked well for both applicants and service providers.

Currently the only recourse of which SECA is aware when a vendor refuses to offer discounted billing is for the applicant to submit a complaint to the FCC, a process that is unfamiliar and time consuming for applicants. SECA recommends that the FCC establish a streamlined process for E-rate applicants to notify either the FCC or USAC when a vendor refuses to offer discounted billing and for the appropriate officials to communicate with the vendor to try to resolve the matter or refer the matter to the FCC's enforcement bureau to initiate a formal proceeding against the vendor. This process is long overdue and hopefully will provide the necessary direction to vendors and emphasize that they must offer discounted billing to applicants.

IV. BIDDING CLARIFICATIONS SHOULD ENCOURAGE SERVICE PROVIDERS TO SUBMIT TIMELY AND RESPONSIVE BIDS, AND NOT MANDATE THAT APPLICANTS HAVE TO ADDRESS NON-RESPONSIVE AND LATE SUBMISSIONS.

A. Introduction

In the Initial Comments, SECA requested relief for applicants from two relatively new burdensome requirements imposed by the administrator relating to the bid acceptance and evaluation process. First, SECA explained that repetitive marketing emails from vendors should not have to be reviewed, evaluated, or retained because the emails are not in fact bids. Unless a vendor communication in response to an FCC Form 470 contains a firm offer that if accepted

would constitute a legally binding agreement the communication should not be considered a bid. This approach is how the Federal Acquisition Regulations define a valid bid.

Second, SECA explained that the longstanding practice, as supported by FCC regulations and the language of the FCC Form 470 Receipt Acknowledgment Letter, that the FCC Form 470 Allowable Contract Date is the *de facto* bid deadline unless the applicant specifies a later deadline, should be explicitly upheld by the FCC. The new interpretation in more recent years, that all bids received up until when the applicant conducts the bid evaluation must be considered whenever the applicant does not explicitly state the bid deadline in their FCC Form 470, has imposed yet more burdens on applicants and essentially relieved service providers from having to submit timely bids.

B. Discussion of FCC Form 470 Bidding Deadline Options

In the Further Notice of Proposed Rulemaking the FCC asked whether the FCC Form 470 should be amended to add a field for the applicant to specify the bid deadline. GCI supported this approach in their initial comments, whereas US Telecom wants to preserve the status quo in order to enable applicants to consider bids submitted later after the Allowable Contract Date. SECA did not express an opinion on this question in initial comments. Rather, SECA suggested that the Allowable Contract Date should be the *de facto* bid deadline when there is no explicit deadline mentioned in the FCC Form 470.²

²SECA contends that the governing FCC regulation does not require that late bids must be considered until the bid evaluation is conducted. Section 54.503 (c) (4) of the E-rate regulations, 47 C.F.R. Part 54, requires the administrator to issue a confirmation after the FCC Form 470 is certified, that shall “*include the date after which the requestor may sign a contract with its chosen provider(s).*” (emphasis added). The confirmation, commonly referred to as the FCC Form 470 Receipt Acknowledgment Letter, appears in the Applicant’s EPC news feed and states *nothing* about having to accept bids up until the time that the bid evaluation is conducted. To the contrary the language states that applicants may proceed to select their service provider after the 28-day waiting period is satisfied.

SECA agrees that adding a bid deadline field to the FCC Form 470 is advisable, and would address this concern, but only with three essential conditions. First, the field must have edits built in to prevent an applicant from choosing a date that is less than 28 days. Second, the date must be capable of being modified should the applicant extend the bid deadline. Third, the field should clearly state that applicants are not required to, but may choose to, consider bids submitted after the bid deadline. This would allow applicants to consider any late-submitted bids if they so choose, but would not obligate them to do so, and would remove the risk of a competitive bidding finding for rejecting late bids.

All interested parties would clearly be on notice of the bid deadline and any confusion over the Allowable Contract Date would be eliminated. Notably, GCI supports the bid deadline field being added to the FCC Form 470.³ US Telecom recommended the continuation of the status quo to encourage more robust competition. The bid deadline field on the FCC Form 470 should encourage robust competition by incenting vendors to submit timely bids. Further, applicants will still have the discretion to consider late bids but will not be penalized for rejecting them. The bid deadline field will eliminate the current confusion and will make the bid deadline explicit rather than implicitly derived from the Allowable Contract Date.

C. A Deadline for Completing Bid Evaluations Is Already in Effect and Is Not Needed.

In their initial comments, GCI proposes that applicants should have a deadline for the completion of bid evaluations.⁴ SECA strongly objects to this proposal. The FCC Form 471 filing deadline already serves as the deadline for completing bid evaluations and entering into an

³ GCI Initial Comments, p. 7.

⁴*Id.*

agreement with the winning bidder. We understand GCI's concerns that they need to have a sufficient planning horizon to install and provision new services, which appears to be the underlying reason for its proposal. But such a deadline would be counterproductive and punitive. For example, applicants may need the approval of their board of directors before they can announce the contract award, and therefore, cannot be held to a specific deadline for announcing the results of their bid evaluation. If an applicant missed the deadline for completing its bid evaluation would this jeopardize the applicant's ability to file for E-rate? Further, the applicant may not be willing to incur the risk of not receiving E-rate approval on the contract and therefore may not be willing to authorize the work to begin before E-rate funding is approved. Consequently, the imposition of a bid decision deadline is simply not feasible for addressing the concern raised by GCI.

If there are constraints on a vendor's ability to meet a July 1 in-service date by not having a signed contract by a particular date, the vendor's bid response should state this limitation so that the applicant is aware of this issue. Should it become necessary, the applicant would then need to make accommodations for a later transition of service after the July 1 start of the funding year. In other words, the E-rate program already has measures in place to address possible delays in the start of new services. This proceeding also raises the prospect of the FCC's explicit clarification of the procedures that will govern the delayed transition of service, and therefore, provide additional clarification to GCI and other vendors that may face this situation.

D. Consortia Must Follow The Same Competitive Bidding Requirements as Other E-rate Applicants.

Uniti Fiber posits that some consortia are so large that they “push the envelope of fair play and program rules.” The Company states, “consortia that monopolize a state market and do not work with multiple service providers have the potential to disrupt the E-Rate program.” This statement is not supported by any specific examples, and further does not ‘tell the whole story.’ A consortium lead may require the submission of a bid by a single vendor and single SPIN, because that may be the only way in which the consortium lead is able to use its resources to oversee the service provider’s billing and delivery of service. Such a requirement typically has no restriction on whether the proposer may subcontract with other vendors to coordinate the delivery of services, which would provide an opportunity for multiple vendors to partner together to respond to a large consortium procurement. Indeed, based on SECA members’ experience and knowledge, cooperative arrangements between multiple vendors to submit a proposal with a single SPIN are routine.

Nearly each state in the country has a trade association of data transmission and/or internet service providers that could coordinate the formation of cooperative alliances among vendors to enable one prime contractor to submit a response to a large procurement. Uniti Fiber should consider these options if they want to participate in large procurements that are beyond the company’s own footprint when the procurement requires that various locations be served beyond Uniti Fiber’s footprint.

Applicants have the right to establish the requirement to have a single SPIN response to the RFP and to expect vendors to form these cooperative agreements as part of the bid preparation process. These practices are fair, and do not undermine the E-rate competitive

bidding requirements. Uniti Fiber’s suggestion of special rules for consortium procurements is unnecessary and should not be adopted.

V. SECA RECOMMENDS MODIFYING THE CATEGORY 1 INTERNET AND DATA TRANSMISSION SERVICE REQUEST DESCRIPTIONS TO CLARIFY AND DEFINE EACH SERVICE IN ACCORDANCE WITH THE LANGUAGE OF THE ELIGIBLE SERVICES LIST.

The FNPRM asked whether the FCC Form 470 Category 1 dropdown menu would benefit from further clarification, noting that the dropdown menu already has been amended recently. The FNPRM also asked more generally for suggested streamlining recommendations for the various program forms.

SECA’s initial comments support the elimination of the FCC Form 486 and the allowance of the Form 479 CIPA Compliance Form to cover multiple funding years.

SECA also supports the modification of the FCC Form 470 drop down menu options for Category 1 services. Although the current language was adopted for FY 2022 and was meant to be easier for applicants to navigate, they unfortunately have perpetuated rather than alleviate confusion.

SECA recommends the following language for the Level 1, Level 2 and Level 3 service requests for the Internet and data transmission services:

Level 1: remains as is – I seek bids for internet access and/or data transmission service.

Level 2 and Level 3 choices:

- I seek bids for bundled Internet access with data transmission service. delivered over any transmission medium. Do not choose this option for data transmission service only. {create help or hover text to define “any transmission medium”}
- I seek bids for stand-alone internet access without data transmission service where data transmission service is procured separately (this is rare).

- I seek bids to purchase data transmission service only (i.e., that does not include internet access service and includes any combination of transmission medium. {Create hover or help text to define “any transmission medium”}).
 - I seek data transmission service over leased lit fiber.
 - I seek data transmission service provided over any transmission medium.
 - I seek data transmission service provided over leased dark fiber capacity (e.g., a specific number of dark fiber strands) or leased lit fiber.

SECA is compiling other recommended revisions to the FCC Form 470, FCC Form 471 and EPC functionality that will be finalized and submitted to the FCC and USAC with screen shots of the existing forms and edits to those pages that will specifically illustrate the proposed revisions. We intend to finalize and submit these recommendations in the near future and in time for the design of the next version of the forms to submit for OMB approval under the Paperwork Reduction Act before the current forms expire in November of 2024.

VI. ANALYSIS OF HISTORIC DISCOUNTS FROM OPEN DATA SUPPORT SECA’S RECOMMENDATION THAT APPLICANTS SHOULD HAVE THE OPTION TO USE THE SAME DISCOUNT PERCENTAGE FOR FIVE YEARS.

In initial comments, SECA proposed that applicants should have the option to validate their discount calculation concurrent with the beginning of each new Category 2 budget cycle and to rely on that same discount percentage for five years. This measure would be a significant simplification and benefit to applicants and also improve USAC’s efficiency of processing FCC Form 471 applications by vastly reducing the number of discount validation outreach inquiries initiated each year by PIA.

Using USAC’s Open Data information, on behalf of SECA, E-rate Central has analyzed the change in Category 1 discount percentages between FY 2019 and FY 2023 for 10,012 school districts that filed Category 1 applications in both of these years. They found that over 75% of

the applicants have the same discount percentage in FY 2019 and FY 2023. The following changes were seen from the Open Data analysis:

Change FY 2019-2023 in C1 Discount for School Districts			
	NSLP	Percentage	Percentage – No change
Average Change	0.74%	0.22%	
Count – Increase	4,400	1,260	
Count – Decrease	3,651	1,076	
Count -No Change	1,961	7,676	76.7%
Total number of Districts	10,012	10,012	

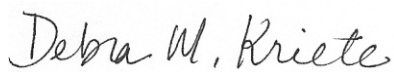
There were 1,260 districts whose discount increased, 1,076 discounts whose discounts decreased, and 7,676 districts or 76.7% of the total number of districts examined with no change in their discount. Under the SECA proposal, the districts whose discounts increased would have the option of entering the updated data and asking for an updated discount validation similar to the way in which the Category 2 budget enrollment validations work. The detail of the analysis is attached as Appendix A.

We believe this data supports SECA’s proposal for 5-year discount validations because all applicants would benefit from the streamlining measure by not being subjected to annual discount validation reviews or having to update their EPC profiles annually. Applicants whose discounts increase over the five-year period will have the option to request the increase to be implemented, and the relatively few applicants whose discounts decrease will not have to implement this reduction until the next five-year cycle.

VII. CONCLUSION

The State E-rate Coordinators' Alliance respectfully requests the FCC to adopt a Report and Order consistent with the recommendations set forth in our Initial Comments and these Reply 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

Dated: October 23, 2023