



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

In the Matter of)	
)	
Modernizing the E-rate Program for Schools and Libraries)	WC Docket No. 13-184
)	

Initial Comments of the State E-rate Coordinators' Alliance
Regarding
Notice of Proposed Rulemaking

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I. Introduction and Summary

The State E-rate Coordinators' Alliance ("SECA")¹ is pleased to submit these Initial Comments in response to the Federal Communications Commission ("FCC" or "Commission") Notice of Proposed Rulemaking to modernize the Schools and Libraries Universal Service Support Mechanism, commonly referred to as "E-rate." SECA completely agrees with the FCC's conclusion that E-rate has been a resounding success and we agree with the Commission's recognition that the E-rate must be reformed to address the 21st century technology needs of our schools and libraries. In this regard, we fully endorse the three goals for the program as stated in the NPRM: ensuring schools and libraries have affordable access to 21st Century broadband that supports digital learning; maximizing the cost-effectiveness of E-rate; and, streamlining program administration.²

Prior to the release of the NPRM, SECA submitted a comprehensive White Paper on June 25, 2013 in CC Docket No. 02-6 proposing various E-rate reforms. SECA was gratified to see that several of its suggestions were incorporated as either questions or proposals in the NPRM. These comments will cross-reference and expand upon the positions set forth therein to the extent they are relevant to these comments.

The extremely broad nature of the FCC's NPRM, with its 616 questions and 357 conceptual items on which comments have been invited, compelled SECA to prioritize the issues on which to

¹ SECA accomplishes its work through the resources of its 98 individual members who provide statewide E-rate coordination activities in 45 states and 2 U.S. territories. The five states who are not represented in SECA are Maryland, Michigan, Minnesota, Montana and Nevada. The territories not included in SECA are Guam and Northern Mariana Islands. Invitations are routinely extended to these entities to join SECA. Representatives of SECA typically have daily interactions with E-rate applicants to provide assistance concerning all aspects of the program. SECA provides face-to face E-Rate training for applicants and service providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the Federal Communications Commission (FCC or Commission). SECA members typically provide more than 1300 hours of E-rate training workshops annually to E-rate applicants and service providers. In addition to the formal training hours, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails. We do not have any administrative staff and rely full time on our members' volunteer activities.

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

² *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, FCC 13-100, Notice of Proposed Rulemaking (released July 23, 2013) ("hereinafter referred to as "NPRM") at ¶¶ 1-4.

submit initial comments. There simply was not enough time to address each and every question and concept raised in the NPRM. SECA hopes to use the one month interval between the deadlines for initial and reply comments to reflect on other parties' views and to identify additional issues on which it may wish to comment as well as issues addressed herein on which further elaboration may be appropriate.

The breadth of the NPRM also makes it equally challenging for SECA to understand the proposed blueprint for updating E-rate and how the hundreds of proposals may intersect and be aligned and to obtain a full picture of what E-rate 2.0 might look like. While SECA understands that the FCC wanted to solicit comments a wide variety of program changes, , this desire should be balanced with the agency's requirement to provide sufficient and adequate notice to stakeholders of possible changes to its regulations. To that end, SECA strongly encourages the FCC to issue a public notice or supplemental order that describes concrete proposals under consideration (as opposed to concepts and questions) with specific rule changes in order to allow parties to submit comments on the cohesive reform approach. The FCC followed a similar path when it reformed the Universal Service Support Mechanism for Rural Health Care Providers. After comments were received to the initial NPRM, a Further NPRM was published to solicit comments on more detailed and specific proposals.

It is particularly imperative to undertake this process in order to consider the cost implications of adopting the new reform measures and to adequately size the E-rate fund prospectively. Some proposals under consideration may have a downward impact on the fund, such as de-funding voice phone services. Other proposals such as providing support for higher capacity broadband services and broadband internal connections as part of Priority 1 funding may have an upward impact. It is impossible to discern how much of an increase or adjustment to the fund is required, based on the July 23, 2013 NPRM and parties deserve an opportunity to comment on the proposed re-sizing of the fund. When the E-rate program rules were first established,

stakeholders had a similar opportunity because the Joint Board proposed a specific funding cap of \$2.25 Billion in its Recommended Decision and also set forth the supporting calculations and references for this calculation.³ Interested parties then were able to submit comments to the Recommended Decision.

There can be no question that the amount of the annual funding cap must increase to accommodate present and future demand. While not knowing how much of a fund increase is needed, it is important to note that in most years there is at least \$2.00 requested for every \$1.00 in funding available.

SECA's comments are summarized as:

- There must be additional permanent funding allocated to E-rate in order to meet the program objectives and demand arising from any program revisions.
- Specific performance goals and measurements are acceptable to be prescribed provided there is no penalty or consequence for not meeting them. Network monitoring should not be mandated.
- Broadband services and related equipment that is narrowly defined by the FCC should receive Priority 1 status. There must be adequate permanent funding allocated to meet program demand.
- Regulatory treatment of dark and lit fiber should be the same.
- Purchase and construction of WANs should be studied by evaluating existing case studies and cost data.
- Paging and basic maintenance should no longer be eligible for support. All other non-broadband and "ride-over" services currently classified as Priority 1 services, and all other internal connections not directly related to broadband should be classified as Priority 2 service/equipment and subject to a flat discount of 50%.
- The "educational purposes" definition should remain as is, and not made more restrictive.
- The discount calculation and application process for school districts should be performed at the district wide level.
- A budgeted approach for E-rate funding based on per-student or per-building caps will not be efficient and will cause additional unspent funding.

³ *Joint Board on Universal Service*, Recommended Decision, CC Docket 96-45, FCC 96J-3 (Released November 8, 1996) at ¶556.

- Pre-application reviews are an essential component of program controls and must continue to be undertaken. A simplified budget approach to allocating funds does not sufficiently protect the integrity of the program.
- Increased consortium buying can be encouraged by exempting all state bid contracts from E-rate procurement requirements.
- Applicants should not be required to publish contract and bidding information.
- Electronic filing of and access to all forms and correspondence should be a priority.
- BEAR payments should be remitted directly to applicants.
- CIPA clarifications are needed for off-campus usage of school owned devices and on campus usage of non-school owned devices so as to remove uncertainty.
- The CEO NSLP Program requires adaptations to NSLP percentage calculations.
- Wireless community hotspots should be permitted but not mandated to be expanded at the discretion of local school boards.
- Procedures for national emergencies should be codified.

II. The Historical Shortfall And Oversubscription Makes Clear That More Funding Is Needed To Meet The Statutory Goals Of Providing A Specific, Predictable and Sufficient E-rate Fund. (Throughout NPRM, *e.g.*, ¶¶ 63, 163, 173)

The crux of any reform and improvement of the E-rate program is ensuring there is a sufficient and predictable funding source to meet the needs of the nation's schools and libraries. The universal service statute prescribes that there should be affordable access to and use of the services pursuant to 47 U.S.C. §254(c)(3), and also funding must be specific, sufficient and predictable under 47 U.S.C. §254(b)(5). These requirements have not been met year after year when demand has exceeded available funding.

The E-rate program has the dubious distinction of being the only universal service mechanism that has been underfunded since its inception. When the new support programs were established following the 1996 Telecommunications Act, E-rate and Rural Health Care were the

only two programs to be capped. Unlike E-rate, Rural Health Care has never exceeded its cap while E-rate funding has been insufficient, year after year. The E-rate program simply cannot meet its statutory objectives without infusing the program with additional funding. Furthermore, we see no way to meet the FCC’s proposed broadband goals without a substantial increase in the fund.

The question is often asked, “Well, how much more money does the E-Rate Program need to fully meet the connectivity ***and*** infrastructure needs of our Nation’s schools and libraries?” This is the key question that must be addressed as part of the FCC’s comprehensive reform proposals. If the program parameters are going to change, then historical information may not be a reliable forecast of future need. Moreover, historical data significantly understates the funding deficit. Experienced applicants well understand the futility of applying for Priority 2 funding unless they have a relatively high discount. Since the E-Rate program’s inception in 1998, the annual funding cap has grown by approximately 6% while demand has grown by more than 150%.⁴ Demand for FY 2012 was \$3 billion more than the annual cap.

Many applicants with E-Rate discounts less than 80% no longer bother to request Priority 2

⁴ Since 2011, the annual cap has been adjusted for inflation, from \$2.25 billion to \$2.38 billion. The increase of \$130 million represents a 5.7% increase. The lowest annual demand occurred in the first year, which was \$2.03 billion. In recent years the highest annual demand occurred in FY 2012, which was \$5.24 billion, or an increase of \$3.2 billion or a more than 150% increase. Unfortunately the cap was not adjusted retrospectively to account for inflation prior to FY 2011. If the FCC were to retroactively index the fund to inflation since 1998, the current size of the fund would be \$3.155 billion, based on the CPI-U.

Year	Inflation Rate	Funding Available (Billions)
1998	Start	\$2.25
1999	2.7%	\$2.31
2000	3.4%	\$2.39
2001	1.6%	\$2.43
2002	2.4%	\$2.49
2003	1.9%	\$2.53
2004	3.3%	\$2.62
2005	3.4%	\$2.71
2006	2.5%	\$2.77
2007	4.1%	\$2.89
2008	.1%	\$2.89
2009	2.7%	\$2.97
2010	1.5%	\$3.01
2011	3%	\$3.10
2012	1.7%	\$3.155

because available funding has traditionally run out after the higher discount bands of applications (80% - 90%) have been funded. Applicants with a discount percentage less than 80% have been funded in the Priority 2 category only five times in the last 15 years and only twice in the last 10 years.

FY	P2 Discount Threshold	Comments
1998	70%	
1999	20%	
2000	82%	
2001	86%	
2002	81%	
2003	70%	Including \$420M roll-over
2004	81%	
2005	80%	
2006	86%	
2007	81%	Including \$650M roll-over
2008	86%	Including \$600M roll-over
2009	77%	Including \$900M roll-over
2010	20%	Including \$1.15B est. roll-over
2011	88%	Including \$500M roll-over
2012	90%	Including \$1.05B roll-over
2013	<i>uncertain</i>	

The reality is that approximately eight (8) out of every ten (10) applicants receive \$0.00 dollars in Priority 2 funding.

The NPRM is replete with references concerning funding sufficiency and adequacy. For example, funding sufficiency is indirectly mentioned in paragraph 64 when the FCC asks:

To the extent stakeholders believe that these options, along with measures discussed in other sections of this NPRM to increase the efficiency of E-rate funding, are insufficient to meet connectivity needs of schools and libraries, we also seek comment on other options to achieve the proposed goal of ensuring that schools and libraries have affordable access to high-capacity broadband services.

The issue arises again in the context of modifying the discount matrix, in paragraph 117:

To have sufficient funds to meet applicants’ needs for high-capacity broadband and equitably distribute funding across schools and libraries, we seek comment on whether we should gradually increase, over time, the minimum percentage of matching funds that E-rate applicants must provide when seeking support from the E-rate program. We seek comment on whether this would better serve – on a cost benefit basis – our statutory mandate to “ensure affordable access to and use of” E-rate services.

In seeking to encourage public-private partnerships and coordination with other universal service programs, funding concerns are mentioned again in paragraph 163:

In this section, we seek comment on what additional steps the Commission should take to ensure that there are sufficient funds to meet the connectivity needs of students, teaching staff, and libraries.

More directly the question of increasing the funding cap on a temporary short-term basis is raised in paragraph 173:

Alternatively, we seek comment on whether a temporary increase in the E-rate cap is necessary to reach our goals and ensure high-capacity broadband connectivity to and within schools? If we were to authorize such a temporary increase, should we modify our rules to focus the temporary funds on providing services related solely on high-capacity broadband connectivity? What services should be eligible for support under such a short-term program? How much short-term funding would be needed to connect all or virtually all schools to infrastructure or other connectivity sufficient to meet their needs? How much short term funding, and over what period of time, would be needed to provide robust internal connections sufficient to take advantage of the high-capacity broadband connectivity to schools and libraries? Should any such funding be allocated using the generally applicable discount matrix, application process, timeline, and other rules, or should we consider modifications, for example to accelerate availability of funding for upgrades? If we consider a temporary increase in E-rate funding to upgrade school and library connections for digital learning, should we limit participation to only some category of applicants, such as only regional consortia?

The additional needed funding must be permanent and sustainable. A one-time infusion of cash over a defined period of years may help support the build-out of fiber connectivity but will be unsuccessful in allowing the nation's schools and libraries to implement and support a sustainable high speed world class broadband communications network.

Communications technology equipment must be periodically refreshed to continue to function properly and to reflect evolving advances in technology. This equipment includes the components necessary to ensure that the bandwidth can operate at the needed high speeds from the service delivered to the school or library door (network demarcation point) and inside the buildings. Technology investment is not a “once and done” deal. An article published by NetworkWorld in 2005 explained that its product-test experts in the Network World Lab Alliance and members of the Network World Advisory Board concluded that switches have an average life

span of three to five years. Moreover, advances in software may drive hardware changes in order to be able to use the new software.⁵ More recently ComputerWorld published an article in which it cited to statistics that indicate that switches have an average life of five years.⁶

A five year *temporary* increase to E-rate funding will provide no means to enable schools and libraries to sustain their broadband networks. So much of the effort and resources invested to establish high speed broadband capability will be wasted if only a five year time span is included in the planning horizon. The long term view must be considered and the additional funds allocated to E-rate must be **permanent**.

III. Goals and Measures May Be Appropriate Targets But There Must Be No Retribution Or Mandate Associated With Implementation. (NPRM §II, ¶¶ 13-55)

SECA members understand and appreciate that the need for additional bandwidth will continue to grow as digital learning becomes more ubiquitous. As the State Educational Technology Directors Association aptly noted in its report, *The Broadband Imperative: Recommendations to Address K-12 Education Infrastructure Needs*:

It is a simple fact that access to high-speed broadband is now as vital a component of K-12 school infrastructure as electricity, air conditioning, and heating. The same tools and resources that have transformed our personal, civic, and professional lives must be part of learning experiences intended to prepare today's students for college and careers. College students rely on technology for academic success and to improve personal productivity. 1 In the workplace, everyone from mechanics to accountants to physicians depends on technology to conduct their work, grow their businesses, and collaborate with their colleagues - both locally and globally.

With easy access to reliable, robust, and cost-effective broadband, we can ensure that each student's school experience mirrors evolving societal expectations for public education. Access permits students to create engaging text and multimedia projects such as videos, collaboratively conduct research with students

⁵ <http://www.networkworld.com/supp/2005/tips/112805-lifecycle-tips.html> (last visited September 13, 2013).

⁶

http://www.computerworld.com/s/article/9175832/Pulling_the_plug_on_old_hardware_Life_cycle_management_explained?taxonomyld=12&pageNumber=2 (last visited September 13, 2013).

on the other side of the state or the world, take online courses not available locally, and talk directly with authors and experts. Teachers can collaborate with colleagues, participate in professional development online, and immediately analyze the results from online assessments to personalize instruction for each student.

Moreover, thanks to the proliferation of low-cost laptops, tablets, eReaders, and smartphones-and the rise of state and district high-access and 1-to-1 programs-teaching and learning is no longer limited to the confines of a school building or a school day. In fact, out-of-school access to broadband by students and teachers is now arguably as important to the overall quality of the student learning experience as access at school.⁷

It is sensible to focus on the need to ensure that adequate broadband capability is available to the nation's schools and libraries.⁸ SECA agrees that the examination must include not only the capacity of data circuits (the size of the pipe) and Internet quantity (the amount of data transmitted through the pipe) but also the capability of equipment located inside schools and libraries (internal connections equipment and cabling) to transmit data to students and patrons.

In response to the various questions posed by the FCC, SECA is aware that many applicants currently monitor and track network bandwidth consumption to ensure its adequacy. Service providers often will provide usage reports to assist applicants in identifying whether their circuits and Internet quantity is sufficient or needs to be adjusted. Applicants also frequently conduct speed tests online to obtain a snapshot of their Internet transmission speed. A common industry standard is to increase capacity when average usage reaches the 60% to 70% level. This standard is used in order to provide sufficient advance planning time to secure and implement additional bandwidth, and to ensure that there is adequate bandwidth to meet projected peak demand. No mandate for any extra network usage monitoring equipment should be imposed by the FCC that requires applicants to incur additional costs. Further, such extra equipment is not needed because current hardware schools have (*i.e.*, their routers) can provide bandwidth usage data.

⁷ *Id.* at 1.

⁸ SECA does not offer a position on whether the proposed SETDA and ConnectED benchmarks are appropriate. Individual members of SECA that submit comments on behalf of their respective states may address this measure.

Any goals and measures adopted should not be tied to learning outcomes or test scores and is way beyond the statutory purpose of the program (NPRM at ¶40). It is an impossible correlation to draw. SECA agrees that because classroom performance is affected by many factors, there are no reliable conclusions to be drawn from bandwidth goals or objectives alone. SECA also agrees that such an exercise is inappropriate for the FCC to undertake given that educational outcomes are well beyond the purview of the agency's expertise.

IV. Ensuring Schools and Libraries Have Affordable Access to 21st Century Broadband that Supports Digital Learning (NPRM §III, ¶¶56-176)

A. Adequate Funding For Broadband Service And Equipment Is Essential. (NPRM §III.B.1; ¶¶67-89)

In order to establish adequate connectivity to support 21st century digital learning, SECA supports prioritizing broadband services and equipment for E-rate funding. This approach would fundamentally alter the manner in which funds are allocated. For the first time since the program began, funding for the purchase of certain internal connections equipment for broadband connectivity would be eligible for Priority 1 funding. The change is essential, however, in order to ensure that end-to-end broadband connectivity is actually available.

The current system affords Priority 1 treatment to broadband circuits and Internet access service, but classifies the related internal connections equipment as Priority 2. Because of the uncertainty of the availability of Priority 2 funding, however, applicants either are unable to procure the equipment without E-rate funding or must find the means, which may or may not be available, in their local budgets to pay for the equipment. The current model is incomplete at best and wasteful at worst. Unless the network equipment inside school and library buildings is sufficient to deliver broadband speeds, the fact that adequate broadband service may be delivered to the doorstep is meaningless. By reclassifying the essential equipment for broadband

transmission as Priority 1 eligible and ensuring the annual funding cap is sufficient to meet anticipated demand, the potential choke point inside buildings likely will be eradicated.⁹

As the SECA White Paper explains, broadband and Internet access services are typically leased under multi-year contracts that offer far more advantageous pricing than a single year agreement.¹⁰ These multi-year contracts minimize the pre-discount price which is beneficial to both the E-rate fund and to the school or library beneficiary. The equipment and cabling inside school and library buildings are purchased periodically as one-time, non-recurring purchases.

Although the White Paper recommends continuing the Priority 2 classification for broadband equipment, SECA now supports the reclassification of *essential* broadband equipment as Priority 1. This change acknowledges the essential necessity of this equipment in order to meet the overall goal of deploying broadband at sufficient speeds to all schools and libraries. The FCC will have to set parameters for the permissible frequency of these equipment purchases, particularly if the 2-in-5 rule is abolished (which SECA supports).

The definition of ***essential broadband equipment*** must be very explicit. The recommendations in SECA's White Paper are limited to routers, switches and access points, and communications cabling.¹¹ Indeed, as explained in more detail below, SECA recommended that all other Priority 2 equipment and maintenance service be de-funded and no longer eligible for support. These changes are critical in order to ensure that broadband access truly is the focus of all program resources.

These changes are all the more important if broadband equipment is going to be reclassified

⁹ The maximum discount for the narrowly defined category of broadband equipment that will be eligible for Priority 1 treatment must be carefully considered when establishing the new program parameters. Historically SECA has advocated that the maximum discount for internal connections must be set lower than 90% (between 70% and 75% as the maximum) in order to stretch these limited program dollars as far as possible; and, to ensure that applicants maximize their efficiency in planning and submitting these funding requests. SECA does not make a specific recommendation as to what the maximum discount level should be for the newly proposed inclusion of the purchase of broadband equipment within the Priority 1 service category. We plan to consider other parties' comments and proposals, and if appropriate we will address this issue in reply comments.

¹⁰ SECA White Paper, *Recommendations for E-rate Reform 2.0*, dated June 18, 2013 and filed in CC Docket No. 02-6 on June 25, 2013. See <http://apps.fcc.gov/ecfs/document/view?id=7520924964> (hereinafter referred to as "SECA White Paper").

¹¹ SECA White Paper at 8.

as Priority 1. If the FCC is going to add additional eligibility components to Priority 1, whether those components are services or equipment, the success of these reforms will hinge on the availability of sufficient funding to meet all Priority 1 demand. If the program is oversubscribed and a reduction in funding requests is required via proration, applicants will lose ground and progress on deploying broadband will be stunted. It will be particularly egregious if funding is partially rescinded through proration for multi-year broadband service agreements that applicants executed in order to obtain the most competitive pricing. Proration of Priority 1 funding has never been required, and involves a complicated set of issues. Indeed, although each year proration has been an option to allocate the balance of remaining funds to the next lowest Priority 2 discount level - to fully consume all available money - the FCC has refrained from doing so and instead opted to use the funds for carry-forward into a subsequent funding year.

It is impossible to discuss making any changes to the program without emphasizing the importance of adequate funding to meet the new goals of E-rate 2.0. It is equally challenging to quantify the cost associated with implementing these changes. Currently, demand for Priority 2 equipment and services is significantly suppressed because many applicants that do not have high discounts do not submit Priority 2 funding requests because they have come to learn that it is a futile effort. It also is impossible to disaggregate the current Priority 2 demand to determine how much is allocated to switches, routers and wireless access point/controllers.

In an effort to provide some cost data for the FCC's consideration, SECA presents the following. The School District of Lancaster in Pennsylvania, requested funding for switches, wireless access points, controllers and necessary installation services for wireless network capability in eleven (11) school buildings in E-rate FY 2013 (year ending June 30, 2014). The buildings include elementary, middle and high school buildings. The total prediscount cost for the hardware purchase and installation service is \$2,481,381. The average cost per building is \$225,580.

Based on the total cost of the scope of this project, the following information can be gleaned:

- The total hardware cost is \$1,967,931;
- The total installation cost is \$513,450;
- The average hardware cost is \$178,902 per site; and,
- The average installation cost is \$46,677 per site

According to NCES, as of the 2009-2010 school year according to NCES, (the most currently available data), there were 98,817 public school buildings and 33,366 private schools, for a total of 132,183 schools in the United States.¹² Using the Lancaster School District's average cost data \$225,579 per school as one benchmark, the nationwide *prediscount* cost of purchasing and installing broadband wireless access in every school is \$29.8 Billion. Even if it assumed that that 25% of the nation's schools already have a wireless infrastructure, the E-rate *prediscount* demand is still \$22.3 Billion (75% of the \$29.8 Billion)..

In order for this proposal to be capable of implementation, the FCC would need to estimate how much the E-rate discount demand is, based on the *prediscount* calculations, and ensure that the additional funding could be made available through an increase in the funding cap and/or cost savings from other reforms such as de-funding other services.

One such E-rate cost saving measure for which SECA strongly advocates is leveraging Connect America Funds to defray the payment of non-recurring installation costs for broadband services to be provided to customers located in rural areas of the country for which Connect America Funds are being allocated in order to pay for broadband infrastructure build-out. As the FCC's Executive Summary of the Connect America Fund explains:

¹² <http://nces.ed.gov/fastfacts/display.asp?id=84>

The CAF will help make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband, including mobile voice and broadband networks in areas that do not, or would not otherwise, have mobile service, and broadband in the most remote areas of the nation.¹³

There must be a way to leverage the universal service funds being disbursed through the Connect America Fund with the E-rate program so as to prevent potential duplication of funding resources. Indeed, schools and libraries are considered community anchor institutions that are specifically mentioned as potential broadband beneficiaries from the Connect America Fund. The NPRM also notes that in its *USF/ICC Transformation Order* the Commission adopted broadband service obligations for eligible telecommunications carriers (ETCs) that receive high-cost support, and that these carriers are to engage with community anchor institutions, which include schools and libraries, in the network planning stages with respect to the deployment of Connect America-supported networks.¹⁴ These standards are relatively modest compared to the amount of bandwidth that schools and libraries need: actual speeds of 4 mbps downstream and 1 mbps upstream. Nonetheless, SECA strongly supports this coordination and consultation requirement.

SECA suggests, at a minimum, to the extent a school or library customer is located in an area served by a carrier that has received Connect America Funds, the telecommunications carrier must provide a credit to the school or library customer for build-out of new broadband services. The credit must be equal to the Connect America subsidy that the telecommunications carrier already received for deploying broadband in the area in which the school or library customer is located. There should be no double dipping of universal service funds between the different mechanisms.

¹³ http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310692A1.pdf

¹⁴ NPRM ¶167

B. *The E-rate Regulatory Treatment Of Dark and Lit Fiber Should Be The Same. (NPRM III.B.1, ¶¶71-72)*

The NPRM suggests that one area in which program rules may be changed to benefit applicants in pursuing cost-effective broadband services concerns dark fiber. The *Sixth Report and Order* makes clear that the definition of dark fiber, for purposes of E-rate is fiber that is unlit by the service provider. Dark fiber does *not* refer to excess or unused fiber. In fact, the FCC made clear that with respect to dark fiber:

Specifically, we require applicants that choose to lease dark (i.e., unlit) fiber to light it immediately and to use the lit fiber to meet their broadband needs in order to receive E-rate support.¹³

¹³ That is, an applicant cannot receive E-rate funding for dark fiber until it is lit. If the dark fiber is leased beginning July 1, but the applicant does not light the fiber until August 1, E-rate support will only be available beginning August 1.¹⁵

The practical difference at the present time is that with leased lit fiber, the applicant purchases a fiber service that has the modulating electronics as part of the service that is leased from the service provider. With leased dark fiber, however, the applicant is responsible for providing the modulating electronics to light the fiber so that the service can be used to transmit data.

The current rules continue to strongly favor leased lit fiber over dark fiber in two respects. First, the *Sixth Report and Order* restricted the E-rate eligibility of dark fiber installation costs from the boundary of the property of the school or library into the building. No installation or build-out costs for dark fiber infrastructure in the right-of-way is eligible for E-rate. Second, the modulating electronics required to light the dark fiber are not eligible for E-rate Priority 1 support whereas such leased lit fiber electronics are eligible for Priority 1 support.

The NPRM now seeks to rescind these two restrictions in order to establish regulatory

¹⁵ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, A National Broadband Plan for our Future, GN Docket No. 09-51, FCC 10-175 (Order released September 28, 2010) at ¶ 9.

parity between dark and lit fiber. SECA agrees with this proposal for several reasons. When the FCC permitted dark fiber to become eligible for E-rate in the *Sixth Report and Order*, effective on January 3, 2011,¹⁶ it also authorized non-telecommunications companies to be service providers of dark and lit fiber. In the past only telecommunications common carriers were permitted to provide leased lit fiber service to applicants. Up until then, the only exception for permitting non-telecommunications companies to provide leased lit fiber was if it could be shown that leased lit fiber bundled with Internet access service from a non-telecommunications company was the most cost-effective solution for Internet access service. In that scenario, however, applicants were required to cost allocate any non-Internet usage of the circuits (*e.g.*, for voice, video or data telecommunications as opposed to Internet usage).

In the *Sixth Report and Order*, when the pool of leased lit and dark fiber service providers was expanded to non-telecommunications companies, the agency found, “that broadening the scope of potential suppliers of broadband increases competitive options, which in turn enhances choice and reduces cost.”¹⁷ As the FCC further stated, “Additionally, if schools and libraries are able to receive additional capacity for less money, this should free up E-rate funding to help other schools and libraries meet their connectivity goals.”

By prohibiting E-rate support for dark fiber build-out costs and Priority 1 treatment of modulating electronics, however, dark fiber service may not be nearly as economically attractive to applicants as a leased lit fiber solution even though the total cost of the dark fiber solution is more cost-effective than the lit fiber solution. Applicants have little incentive to fully explore the cost-effectiveness of a dark fiber solution if the build-out cost of the service does not qualify for E-rate support.

¹⁶ 75 FR 75393

¹⁷ *Sixth Report and Order* at ¶11.

Unless the regulatory treatment of dark and lit fiber is afforded parity, dark fiber service will not be a pragmatic option for schools and libraries to consider, because they do not have sufficient resources to pay for the build-out costs on their own without any E-rate support.

SECA believes that if dark fiber service is a more cost-effective solution than a lit fiber solution, then applicants should qualify to receive E-rate support on the same categories of costs for both services.

SECA also firmly believes that a dark fiber solution may be the only available cost-effective option for some applicants seeking broadband service. This stands to reason if an applicant has been unsuccessful in the past in procuring cost-effective leased lit fiber service. By enlarging the service configuration options for applicants, E-rate may help facilitate the deployment of broadband service where none currently exists.

C. Purchase and Construction of Applicant-Owned Wide Area Networks (NPRM § III.B.1, ¶¶79-81)

The NPRM seeks comment on whether there are circumstances under which it will be more cost-effective for schools and libraries to build or purchase their own wide area networks (“WAN”) rather than to lease a WAN. The FCC also wants to know whether there might be occasions where building or purchasing their own WAN is the only way for schools and libraries to get broadband access.

SECA believes that if the FCC is going to allow a self-construction option in the E-rate program for WANs, such an option must be more cost-effective than a leased WAN option. To determine cost-effectiveness we propose that the Commission perform a cost analysis of schools and libraries that have already built and operate their own WANs. Such an analysis must include the total cost of ownership, including all initial (*i.e.*, capital) costs and ongoing costs too. Many SECA members are aware of school district owned WANs in their respective states and some of these

WANs have been in existence for many years. Our members can assist the FCC in identifying these districts and can also assist the FCC in other facets of any WAN cost analysis.¹⁸

D. Various Services and Internal Connections Equipment Should Be Classified As Priority 2 And Funded At A Flat Discount Rate Of 50%. (NPRM §III.B.2, ¶¶90-125)

The NPRM asked parties to identify and explain whether there were any services currently eligible for E-rate support that could be excluded from future eligibility because the services were no longer consistent with a broadband priority. Such services included paging and directory assistance, webhosting, email, basic maintenance and voice phone services.

SECA proposes a two-step approach. Certain services should be deemed ineligible based on the reasons explained below. Second, the remaining services and equipment other than broadband should be reclassified as the new Priority 2 category and a flat discount should be applied across the board.

1. Paging and Basic Maintenance Should No Longer Be Eligible. (NPRM § III.B.2, ¶¶92-94, 101)

Paging service should be excluded from eligibility because it is an obsolete, stand-alone service that will not require any cost allocation of invoices to implement this exclusion. Cellular service has become a ubiquitous replacement for paging service. Few applicants apply for paging funding so this change should not have a significant adverse impact on applicants. Correspondingly, it will have little impact on reducing funding demand.

Basic maintenance of internal connections should also be excluded from eligibility because the costs of these services appear to be excessive and disproportionate to the cost of the equipment being maintained. The way in which the services are funded and paid for by applicants also

¹⁸ Unfortunately time constraints did not allow SECA to collect this information and report on it in these Initial Comments.

contributes to the amount of unspent funds each year and overall program inefficiency. As SECA explained in its White Paper:

Typically basic maintenance is not approved until six months or later in the funding year. In all such cases applicants find the means to support their systems without this approval. Then when approval is received during the second half of the funding year, it is usually to catch up on hardware maintenance items for manufacturers. This type of basic maintenance is no longer needed given the purchasing options of most manufacturers providing a product line that has limited life time warranty, at no charge to the application. It means that any repairs, etc. must be sent off site to the manufacturer. This will not cause any service/network interruptions if the applicant has a spare unit in their district. (Typically the limited lifetime warranty hardware can be sent off and received back within 2 weeks.)

The on-site labor portion of basic maintenance is meant for just basic maintenance, *i.e.*, operating system upgrades as needed, troubleshooting and repair of the network operations or server. These basic tasks are not needed on a day to day basis, but can be accomplished on a monthly or quarterly basis (unless there is an unexpected equipment failure). Given the fact that some applicants go almost the entire year before being funded, they must have other means to support these repairs and issues. It is also an area that is challenging to ensure that there is no waste in terms of vendor hours being billed, and actual work accomplished. With the limited funding, and the need to focus those funds to the P1 area, and in light of the limited P2 eligibility area, SECA supports the elimination of basic maintenance as an eligible service.

Also, many applicants have foregone applying for basic maintenance services because they employ their own personnel who perform this service, and cannot claim E-rate on their personnel costs. The current program encourages outsourcing of this service and unfairly penalizes applicants who have chosen to employ maintenance personnel. By eliminating maintenance altogether, this penalty and/or outsourcing incentive will be removed. To be clear, the FCC should continue to allow funding of bundled manufacturers' warranties as part of the cost of eligible components and should eliminate all funding for insurance type labor maintenance service agreements.

The elimination of basic maintenance service will result in a cost savings of approximately \$280 Million or 5.6% of total demand based on FY 2013.

2. All Other Services Including Ancillary Phone Services and Telecommunications Services Used Exclusively for Voice Communications And Internal Connections Equipment Should Be Reclassified As Priority 2 And Funded At A Reduced Flat Discount Percentage. (NPRM §§III.B.2, III.C.1, ¶¶ 90-125)

Ancillary phone services such as custom calling features, inside wire maintenance, 800 call blocking, directory assistance and text messaging likewise are low cost, and their elimination would not pose any cost savings to the program. The increased processing time and associated cost of pre-application PIA reviews to verify the deduction of these fees would more than offset any potential savings in demand.

Email service and webhosting services are used by many applicants, and may help facilitate 21st Century learning, but these services are supplemental “ride-over” services that are used in conjunction with -- and are made possible by -- high capacity broadband service.¹⁹ The services themselves are not high capacity broadband transmission or Internet access service, or related equipment. The FCC noted in the *Sixth Report and Order* that the services are analogous; therefore, the E-rate regulatory treatment of these two services should be parallel. Because these services are “ride-over” services, they should not receive the same priority as broadband.

Similarly, all telecommunications services that are exclusively used for voice communications should no longer receive the highest priority of funding. These services do not facilitate 21st Century learning or help achieve the broadband goals proposed by the FCC. SECA, however, believes that email, webhosting and telecommunications services used exclusively for voice communications should not be eliminated altogether and continue to be eligible for E-rate funding, albeit based on a different priority system for several reasons.

First, it appears beyond dispute that in today’s environment, voice telecommunications service, email and a website presence is vitally necessary to schools and libraries. While not

¹⁹ NPRM at ¶96.

directly related to broadband service availability, these other services still are universally needed and used by schools and libraries. Second, the elimination of these services from eligibility – particularly voice communications services – will create a significant financial hardship for many applicants who will need to find additional resources to pay the full costs of these services. These organizations in turn will have fewer resources to pay for their non-discounted share of broadband services which will undermine the FCC’s broadband goals. Third, by continuing to make these services eligible for E-rate, applicants will still be required to competitively bid these services, which will ensure that the non-discount amount that the applicants must pay from their own budgets is as cost-effective as possible.

Likewise, the existing Eligible Services List contains many components that help disseminate information to classrooms and libraries but none are essential for delivering or transmitting broadband service.

All of these other services and equipment – including email, webhosting, telecommunications service exclusively used for voice communications and all internal connections other than wireless access points and controllers and routers -- should be reclassified as Priority 2.

Rather than making all or some of these other services and components ineligible or phasing out some services but retaining the eligibility of other services, it is administratively more efficient and is fairer to applicants to allow all of these services and components to continue to be eligible. Applicants will continue to retain their freedom to select the services and equipment that best meet their individual needs. The FCC’s conclusions in its May 8, 1997 *Report and Order* has stood the test of time:

As the Joint Board observed, permitting schools and libraries full flexibility to choose among telecommunications services also eliminates the potential risk that new technologies will remain unavailable to schools and libraries until the Commission has completed a subsequent proceeding to review evolving technological needs. Thus, in an environment of rapidly changing and improving technologies, empowering schools and libraries, regardless of wealth and location, to choose the telecommunications services they will use as tools for educating their

students will enable them to use and teach students to use state-of-the art telecommunications technologies as those technologies become available.²⁰

The new Priority 2 category should also have a greater local match requirement and lower discount.²¹ The reduced discount reflects the lower importance of these services from an E-rate perspective. Applicants will need to be ever more thoughtful about these procurements because they will be required to contribute a greater share of their own resources.

The most compelling reason for the greater local match requirement is to help stretch available funding and make it available to *all* applicants. SECA recommends a flat 50% discount for Priority 2 services and equipment.²² A flat discount allows all applicants to have equal access to Priority 2 funding. The highest discount applicants (81%+) have received nearly continuous access to Priority 2 during the first 17 years of the program and the reduction in the discount is needed in order to open up this valuable resource to others. The other applicants historically have been unable to receive Priority 2 funding routinely or at all, and the suggested 50% discount will be a 100% increase over their current effective discount of 0% in each year that funds are depleted before reaching their current Priority 2 discount.

It is extremely difficult to quantify the impact on the newly proposed Priority 2 category. Historical demand data is broken down by category of service but not by particular service. Also, historical demand is not broken down by each individual discount percentage; the SLD's annual demand estimate includes a stratification by 10 point range in each discount band.

Using the data that are available, however, based on FY 2013 demand for the currently defined internal connections equipment included in Priority 2 funding, SECA estimates that the flat 50% discount would accrue savings of around \$840 Million. This amount includes broadband

²⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, Report and Order (Order released May 8, 1997) at ¶433.

²¹ NPRM at ¶¶117-125.

²² The "One Discount for All" concept (at 50%) was suggested and outlined in detail by CSM, Inc. in their comments during the 2010 E-Rate Broadband NPRM proceeding found at <http://apps.fcc.gov/ecfs/document/view?id=7020520477> at pages 20-22. It should be noted however, that CSM's proposal in 2010 was based on what was then defined as Priority 2 applications. SECA's proposal is not precisely the same as CSM's proposal as it is based on a newly defined Priority 2 that includes services and products not essential to the delivery of high speed broadband service.

equipment which would be transferred to the Priority 1 category but does not account for the cost savings from voice communications services being discounted at a lower percentage. According to the NPRM, there were \$336 Million in funding requests for local and long distance phone service and cellular services in FY 2011. What is *not known* is the associated prediscount amount or the composite average discount percentage of these funding requests for FY 2011. This information is needed in order to compute the magnitude of the reduction on demand brought about by a flat 50% discount for the newly defined Priority 2 funding model. However, SECA's initial rough calculations indicate that the reduction in demand due to a flat 50% discount rate could be in excess of \$900 million.²³

3. The "Educational Purposes" Definition Should Not Be Made More Restrictive.
(NPRM §III.B.2, ¶¶99-100)

One of the possible means to focus on broadband that the NPRM suggests is to narrow the "educational purpose" definition and refrain from allocating E-rate funding to services that will be used only by school and library staff, administrators, or board members. This approach has no advantage and has several disadvantages.

Such a rule does not have any logical basis. School and library staff, administrators and policy makers that work at schools and libraries need to have access to broadband and other supported services in order to do their jobs. Their responsibilities fulfill the core mission of educating students and providing services to library patrons. Without these personnel, there would be no learning or library services available to students and communities.

Imposition of such a restrictive definition would rescind more than a decade of experience

²³ According to Funds for Learning's *ex parte* filing submitted on July 3, 2013, the average E-rate discount in FY 2013 is 69.2%. Using this average discount and applying it to FY 2011 demand for voice and cellular services, the prediscount amount is estimated to be \$486 Million. A 50% flat discount would result in funding demand of \$243 Million, which would represent an additional savings of \$93 Million. Adding to this amount the savings of \$840 Million of existing Priority 2 demand, the total estimated reduction in demand attributed to a 50% discount for the new Priority 2 category is estimated to be in excess of \$900 Million.

with the current interpretation that has worked well. There is nothing in the NPRM that suggests there is a change in circumstances or facts that would warrant the FCC's reconsideration of the definition it established in 2003. In the Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 02-6, citing to the statutory "educational purposes" requirement in Section 254(h)(1)(b), the FCC concluded:

We find that, in the case of schools, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as educational purposes under this program. To guide applicants in preparing their applications and to streamline the Administrator's review of applications, we further establish a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons.²⁴

There is no basis to now reverse course and conclude that administrative services are not equally important as services provided directly to students and patrons.

Nor is a rescission of eligibility for administrative services likely to yield significant cost savings. What exactly is a service that is used only by school and library staff, administrators or board members? Would a telephone line in the administrative offices of a school be such a service? Would it matter if that line was sometimes used by students to place outgoing calls? What about the phone line in the nurse's office that may be used by students to place outgoing calls? Would the Internet access service and high speed broadband circuits need to be cost allocated to deduct the usage associated with school and library staff, administrators and/or board members?

Implementation of such a definition would unduly and unnecessarily complicate preparation of and processing of applications and violate the proposed goal of program simplification. An additional layer of review would need to be added to ensure that an otherwise

²⁴*Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6 (Order released April 30, 2003) at ¶ 17.

eligible service was being used for an eligible educational purpose. Making a distinction between services delivered to students and to library patrons invites an exercise in line drawing that will be impossible to define clearly and to enforce. Such a vague line and will result in subjective application by different PIA reviewers and/or applicants' commission of inadvertent program rule violations. Cost allocation requirements contribute to program confusion, complexity, bureaucracy and increased administrative costs. These costs will more than outweigh any potential savings to the fund by narrowing the definition.

For all of these reasons, the current "educational purposes" definition should remain intact and not be altered.

E. Support Should Be Based on District-Wide Eligibility and Application By School District Including District-Wide Simple Discount Calculation. (NPRM §III.C.2, ¶¶126-132)

SECA strongly supports rescinding the weighted average discount method of computing district discounts and implementing a simple average method just like libraries use to compute their discounts. This single change will help achieve better program efficiency, simplification and equity. The simple average discount would compute a district's discount based on the total number of enrolled students who qualify for a National School Lunch Program subsidy divided by the total number of enrolled students in the district. This NSLP percentage would be correlated to the E-rate discount matrix and the applicable discount would govern all buildings in the district.

Equity is achieved by computing discounts on the basis of the manner in which districts administer their budgets. Although there may be differences in the poverty levels of students enrolled in different schools which would influence the building's E-rate discount, the district has a consolidated budget and resources to support all of its buildings. Tax bases are calculated on an entire district population, not just those of a subset of schools. School districts are the

administrative authorities over all of their schools. The revised district-wide discount formula is based on a district's actual accounting practices and organizational structure. A district wide discount calculation, therefore, is a more equitable funding approach than on the basis of individual buildings.

Second, program simplification is achieved by reducing the workload of applicants in preparing their Form 471 applications. Currently, a district calculates its discount in no less than eight (8) steps.²⁵ Under the proposed district-wide simple average discount calculation, a district would only need to complete half of those steps to calculate the district discount rate for shared services – calculate the percentage of students in the entire district that are eligible for the NSLP and identify the straight matrix discount. The discount would remain the same for all Priority 1 and Priority 2 services for all buildings in the district, regardless of the individual entities within the district that are receiving the service at the time the Form 471 is filed. Should the Commission choose to continue with the rural/urban designation which adds a 5% or 10% discount for rural school buildings in certain NSLP eligibility bands, SECA proposes that the rural/urban factor be factored in district-wide based on the location of the district's central office facility, if the current rural designation system is continued. If the FCC chooses to adopt NCES locale codes for rural designation, the NCES designation for the district should apply.²⁶

This change alone will greatly simplify the Form 471 application process. First, applicants

²⁵ The various steps are:

Step 1: Identify the number of NSLP students in each building.

Step 2: Identify the number of students enrolled in each building.

Step 3: Divide the number of NSLP-eligible students by the total number of enrolled students in each building.

Step 4: Correlate the NSLP percentage of the building to the E-rate matrix to ascertain the E-rate discount.

Step 5: Multiply the E-rate discount by the total number of students in the building.

Step 6: Sum the weighted discounts of each building.

Step 7: Sum the total number of enrolled students.

Step 8: Divide the sum of the weighted discounts by the total number of enrolled students to arrive at the weighted discount of the district.

²⁶ A school district's locale code is not assigned on the basis of the central office address. It is derived from the locale codes of the schools in the district. If 50 percent or more of the public school students attend schools with the same locale code, that locale code is assigned to the district. For example, if 60 percent of students were enrolled in schools with a "rural - distant" locale code, and 40 percent were enrolled in schools with a "town - small" locale code, the district would be assigned a "rural - distant" locale code. If no single locale code accounts for 50 percent of the students, then the major category (city, suburb, town, or rural) with the greatest percent of students determines the locale; the locale code assigned is the smallest or most remote subcategory for that category.

http://nces.ed.gov/ccd/rural_locales.asp (last visited September 13, 2013)

no longer would have to list separately each building and the associated discount of each building on Block 4 of the Form 471. Rather, the applicant (school district and consortia applicants that include school district members) would report the total number of NSLP-eligible students and the total number of enrolled students in the district and Block 4 of the Form 471 would continue to automatically calculate the E-rate discount. This is how the discounts are calculated already for libraries.

This change would also streamline the current procedures governing non-instructional facility building discount calculations. In the course of implementing the FCC's educational purpose definition, the administrator created a new classification of entities called Non-Instructional Facilities ("NIFs") and required applicants to obtain an entity number for certain NIF facilities, and to list those facilities on the Block 4. Determining which NIF buildings require entity numbers and listing on the Block 4 is overly complex. If the NIF is located on the same campus as a school building with classrooms, the NIF does not require a separate entity number if the NIF only provides services to the adjacent school building. If, however, the NIF provides services to other school buildings located on a different campus in addition to providing services to the school building that is located next to the NIF, the NIF *does* require a separate entity number. This is just one example of how an applicant can become inadvertently entangled with the E-rate program requirements and may unwittingly commit an infraction of such requirements.

There is yet another layer of NIF complexity – NIFs with classrooms. Under USAC procedures, if a NIF building contains one single classroom – even a classroom that is only used for a few days per year or a classroom that is used to conduct training to different students every day or every week – the district is required to provide a building discount for that NIF, based on that single classroom, using a ‘snapshot’ of students on a single day. State E-rate Coordinators have repeatedly pointed out to the Administrator that a NIF with classrooms is not a school and students in NIFs with classrooms are essentially being counted twice in the district's E-rate discount

calculations. This procedure actually provides an incentive for districts to game the system, so to speak, and to assign the highest discount to the NIF because there is nothing to prevent districts from using as its 'snapshot day' when the profile of students receiving instruction in the building is the poorest group of students. All of the administrative trappings associated with enforcing NIFs would no longer be required by adopting the simple average discount methodology for districts.

There would be further administrative benefits associated with the simple average discount calculation:

- **Post-Form 471 Submission Block 4 Changes:** Because no such mechanism exists to inform the SLD that a new school has opened or is now receiving the discounted service, this has posed a problem to affected applicants because: 1) invoices are paid only for service provided to entities listed on Block 4 of the original Form 471, and 2) in audits and site visits, the applicant must be able to show that discounts were provided only to the entities listed on Block 4 associated with the FRN. In recent years, USAC has become overly concerned about school closings both during PIA review and post-commitment. In fact, most states and consortia applications are held until the end of PIA reviews because PIA must track down every rumor of a school building closing that is directly or indirectly listed on a Block 4. This concern would be ameliorated by assuming that the billed entity has a shared discount based on all schools in the district.
- **Elimination of the 2/5 Rule:** The 2/5 rule was developed with great intentions, but it never achieved the intended results of opening up access to Priority 2 funding to applicants with relatively lower discounts. It is quite easy to manipulate with the ability to easily obtain new entity numbers (and thus a new two years) with ever-changing school names and shifting school populations. By adopting the full Block 4 streamlining proposal, the need for 2/5 limitations would be eliminated because Priority 2 funding would be administered at the district, not building, level. Also, the 2/5 rule did not align with district technology plans because of the lack of predictability of Priority 2 funding commitments, and was not operationally workable with centrally-located network operations equipment.
- **Equipment Moves:** Equipment moves between schools would be permitted based on a school district's needs and would no longer be prohibited based on the fact that a certain high-discount percentage building received equipment and therefore was required to keep it located in that building for at least three years. The equipment disposal rule would remain, whereby schools could not dispose of E-rate funded equipment for at least five years from its installation date.
- **Speed of PIA Application Review:** PIA staff would not be required to verify every single school's enrollment and NSLP eligibility figures, but rather would simply look at the total enrollment for the district and the total NSLP eligibility. This simplification alone could save days or weeks when reviewing a single district's application especially for larger districts.

Should the FCC believe that building name data is needed, this information could be collected somewhere in the Form (not necessarily Block 4) by obtaining a list of buildings believed to be receiving services on July 1, with no individual building enrollment and NSLP data identified. However, there should be clear and direct written guidance given to the Administrator that those buildings may change throughout the funding year and because applicants only receive discounts on actual costs incurred, the applicant should not be penalized should a building be added or removed from receiving eligible services. This will also make it unnecessary for the Administrator to verify building openings and closings.

For all of these reasons, SECA strongly supports the adoption of the simple average discount method for school districts.

F. A Per-Student or Per-Building Funding Method Will Not Appropriately Target Resources And Will Cause More, Not Less, Unspent Funding. (NPRM §III.C.4, ¶¶135-142)

The per-student or per-building budget allocation is fundamentally flawed because it starts with the backward or upside down premise that the budget amount allocated to each E-rate applicant will meet the applicant's annual financial need for E-rate funding of eligible services and equipment.

Current funding with the inflation adjusted \$2.38 Billion cap has proven to be severely deficient year after year. Setting a budget amount based on the current fund size will undoubtedly fail to meet applicants' financial needs since the budget would be based on an existing inadequate funding cap.

Even if the funding cap were to be increased, a budget approach would be inappropriate because it would fail to take into account the differences in prices and costs across the nation, and the differing technology needs of applicants. The costs of E-rate eligible services, especially those associated with high speed bandwidth transmission service and Internet access service, vary

greatly from one location to another and from one provider to another. In other words, the same 100 mbps circuit may cost \$4,500 per month in one location whereas it may only cost \$300 per month in another location. A block grant, per student or per location allocation does not take this variation into account sufficiently. A block grant approach to providing funding to applicants, therefore, is ill-advised.

We believe E-rate has been more successful than block grant programs in large part because it uses an approach to funding which is targeted and focused very clearly on providing universal access based on individual applicant needs. Also, one of the benefits of the E-rate program is that the support is allocated on the basis of actual costs that are determined after a competitive procurement. These costs can and do vary state by state, by contract, by provider and by location.²⁷

The budget approach also assumes that an applicant's technology expenditures for E-rate eligible services and equipment will be level each year, but in fact this is not the case. While E-rate service costs for broadband and other eligible services may be constant, equipment purchases typically are one-time nonrecurring costs and are not undertaken year after year. Applicants, therefore, are expected to have higher E-rate demand in the years in which they apply for necessary equipment purchases than in other years.

The budget approach also invites additional inefficiencies of E-rate resources. The carry-forward of funds each year when there is so much unmet demand is already a pressing administrative and political problem. E-rate foes see the carry-forward amounts and draw the incorrect conclusion that there is a surplus of E-rate funds and there is no need to augment existing resources. E-rate experts of course can explain why this conclusion is erroneous with a technical explanation that more often than not causes eyes to glaze over. Notwithstanding there may be valid, albeit highly complex reasons, the optics are bad when year after year stakeholders bemoan

²⁷ Even the high cost program which uses cost models to disburse funds to carriers bases the model on costs. The cost model was used to size the fund; the fund did not drive the cost model calculations of disbursements.

the funding shortfall and year after year there are significant “unused” funds rolled over and carried forward. Certainly the perception of inefficient program administration is difficult to rebut in the face of these routine carry-forwards.

The budget approach is likely to exacerbate the current carry-forward problem. At the present time, carry-forward funds arise because there is a difference between the *approved* funding amount and the *disbursed* amount. Applicants may overestimate the amount of funding needed, or may decide at a later time not to purchase the service and/or equipment associated with the funding request. In the budget approach, a second type of discrepancy between *budgeted* funding and *approved* funding is likely to arise. There is no way to know in advance whether applicants will submit funding requests that fully utilize their budgeted funds. There is no way to predict if applicants will use the entire amount of their budgeted allotment of funds in quantifying their funding requests on their Form 471 applications. If an applicant chooses not to use its full budgeted allotment, would the processing time for applications allow these funds to be returned to the pool of available funding dollars in the then current application cycle? If not, then these funds would have to be carried forward pool for funding in a future year, along with the other *approved* funding that was not *disbursed*. This makes little sense, particularly in light of the fact that some applicants likely will need far more money than is budgeted to them. Under the current system, while the present system does not alleviate carry-forwards, it does require applicants to submit documentation to support their prediscount costs and then the program computes the amount of funding to be allocated to the applicant.

Another highly objectionable aspect of the budgeted approach is that it is unworkable with consortium applications. Funds would need to be divided between consortia in which applications seek funding for certain services on behalf of schools and libraries, and the individual school, district or library applications. There is no consideration as to how this would work. For example, a state consortium application typically may seek funding to provide high speed circuits to schools

and libraries as part of the state network. The schools and libraries in turn may also file their own applications for services between buildings and for other services such as voice local and long distance service and/or cellular service. According to the budget approach the funding for each school or library would need to be divided between the consortia and the individual school/library application, but there is no provision for doing so.

The far more sensible approach is to identify the broadband services and equipment that are to be given the highest priority, estimate the cost of these services nationwide, and fully fund the annual cost of these services and equipment. Using other cost data, the remaining costs of services and equipment for the new priority 2 category that SECA recommends should be computed and the two pots of costs should be summed and the new fund size should be set based on these costs. Applicants should be permitted to apply for E-rate services and equipment based on their competitively bid actual prediscount prices.

G. SECA Recommends A Flat 50% Discount On All Priority 2 Services And Equipment To Establish A More Equitable Basis for Funding of Internal Connections And Recommends That Broadband Internal Connections Be Afforded Priority 1 Status. (NPRM §III.C.5, ¶¶143-148)

Acknowledging the historic problem of lack of Priority 2 funding that has plagued applicants, the FCC solicited comments on several different frameworks to ensure that there would be sufficient funding for the purchase of broadband internal connections.

SECA recommended above that the broadband internal connections be reclassified as Priority 1. This recommendation would preserve the Priority 1/Priority 2 distinction, and not collapse the categories as suggested by one of the FCC proposals (¶¶146-147). The Priority 1 category would be exclusively broadband related, and would receive the highest discounts and highest priority for funding. Priority 2 services and equipment would be all other services and equipment not directly related to broadband capacity and would receive a lower, flat discount of 50%.

The key to any reform – whether it be SECA’s proposal or the FCC’s suggestion of collapsing the priority system – is to ensure there is adequate funding to meet demand. Otherwise any reform effort will fail. If there is not sufficient funding for all Priority 1 requests, then applicants will be subject to proration, which will increase their participant contribution share (the non-discounted cost) and will impede the ability to implement their technology plans. There is no assurance that the applicants would be able to find more resources at the local level to make the difference in the E-rate funding shortfall that would occur through proration. Proration would be particularly devastating if it affected long term recurring service contracts that applicants executed (and are unable to cancel or void) in anticipation of receiving their full allotted share of E-rate discounts.

Similarly if there is not adequate funding to pay for Priority 2 services, some of which may be essential to the applicants such as voice communications services and cellular services (to meet safety concerns and protections), the loss of E-rate funding will detrimentally affect their local budgets and may jeopardize their Priority 1 broadband purchases (since they will have to pay the entire amount of their Priority 2 services/equipment costs, some of which are essential and non-discretionary. Thus, the failure to adequately fund both Priority 1 AND Priority 2 sufficiently will jeopardize the success of achieving any broadband performance goals that the FCC may adopt in this proceeding.

H. A Simplified Allocation Of Funds That Dispenses Altogether With Pre-Application Review Will Undoubtedly Increase Applicants’ Risks of Non-Compliance and The Potential For Waste, Fraud and Abuse. (NPRM §III.C.6, ¶¶149-162)

Given how much administrative complexity has grown up around participation in the E-rate program, it is hard to believe that when first conceptualized by the FCC, E-rate was initially based on a self-certification model:

Finally, we agree with the Joint Board's conclusion that schools and libraries should be required to comply with several *self-certification requirements*, each designed to ensure that only eligible entities receive universal support and that they have adopted plans for securing cost-effective access to and use of all of the services purchased from telecommunications carriers under section 254(h)(1) and non-telecommunications carriers under sections 254(h)(2) and 4(i).²⁸

Due to concerns about waste, fraud and abuse, however, the paradigm quickly shifted to a pre-application verification process of program rule compliance. At the direction of the General Accounting Office ("GAO"), an independent third party assessment of internal controls was conducted by PricewaterhouseCoopers.²⁹

There have been nine separate reports issued by GAO regarding the manner in which E-rate is administered and each has touched on the program efficiency and operations. Several were devoted to evaluating whether program controls are adequate. A key precept for the internal controls, pointed out repeatedly by GAO, is the review of applications *prior* to approving or disbursing any funds.

On July 16, 1998, a GAO official, Judy A. England-Joseph, testified before Senate Committee on Commerce, Science, and Transportation (prior to when any E-rate funds had been committed for the first year of the program) and expressed concerns with the sufficiency of the internal controls. She noted that the FCC Chairman called for an independent audit of the Corporation's internal controls to help mitigate against fraud, waste, and abuse.³⁰

²⁸ First Report and Order at ¶425 (Emphasis added).

²⁹ See Summary Statement of Ira Fishman CEO of the Schools and Libraries Corporation Before the Senate Committee on Commerce, Science and Transportation (July 16, 1998); On November 4, 1998, the Schools and Libraries Corporation received an unqualified opinion on the subject of its internal control design for achieving the SLC's stated program and internal controls objectives from its independent auditor, PricewaterhouseCoopers. Second, the SLC wrote to the FCC Chairman William Kennard affirming that it had implemented the recommendations issued from the General Accounting Office (GAO) in July 1998. These recommendations -- steps to take before issuing a single commitment letter -- included:

1. To conduct detailed reviews of a random sample of E-rate applications to assess the overall effectiveness of program integrity, and undertake corrective actions if necessary;
2. To finalize procedures, automated systems and internal controls for the post-commitment process, including funds disbursement;
3. To obtain a report from independent auditors that finds the SLC has developed appropriate internal controls to mitigate against waste, fraud and abuse.

In response, FCC Chairman Kennard wrote to the GAO stating that he was "satisfied that the GAO recommendations have been substantially met by SLC."

³⁰ GAO Report GAO/T-RCED-98-243, *Actions Needed to Strengthen Program Integrity Operations Before Committing Funds.*"

In March 1999, GAO issued a new report, *Actions Taken to Improve Operational Procedures Prior to Committing Funds*,³¹ in which GAO noted that while most of its prior recommendations concerning internal controls had been implemented, there remained some recommendations and concerns that needed to be addressed. Also, the Administrator faced major challenges as it moved into new operational areas, such as reviewing and authorizing reimbursements to vendors.

Several other E-rate related reports were issued by the GAO concerning various aspects of the program's operations in the years 2001 through 2009, and in September 2010 another report entitled "FCC Should Assess the Design of the E-rate Program's Internal Control Structure."³² The GAO stated therein:

The overall design of the E-rate program is complex, and FCC's changes to the program over time through orders and guidance have made it more so. This increasing complexity, in turn, has led USAC to expand the E-rate program's internal control structure over time to address program complexity and to address risks to the program as they became apparent. Although USAC has performed financial reporting and fraud risk assessments, USAC has not conducted a robust risk assessment of the E-rate program and, consequently, may not be efficiently using its resources to reasonably target program risks.

In light of this long history of GAO's close monitoring of the E-rate program controls over the last 17 years, SECA finds it impossible to conceive of a situation where the complete rescission of program compliance reviews, *before* any funds are committed or disbursed, would meet with the approval of GAO.

SECA does not agree that program controls are inadequate, and in fact would argue that some of the current controls are so overreaching that they contribute needlessly to overall complexity without inuring any protections. The reality, however, is that pre-funding reviews are necessary and help mitigate the risk that FCC and Administrator may inadvertently commit and/or disburse funds for requests that are not in compliance with program rules. These pre-application

³¹ GAO Report GAO/T-RCED-99-51.

³² GAO Report 10-908.

reviews also help mitigate risk to the applicant that it may be found later to be non-compliant and have to return money.

While it remains that applicants may be audited after the fact, found to have violated program rules, and required to return money, the pre-application reviews are designed to try to ensure compliance up front before any funds are disbursed. SECA fears that dispensing with all pre-application reviews would create the very real possibility of additional program infractions. In order to guard against waste, fraud and abuse, an approach that simply allocates funding to applicants with no constraints will compromise the long term integrity of the program.

V. Maximizing the Cost-Effectiveness of E-rate Funds (NPRM §IV, ¶¶177-219)

A. Increasing Consortium Buying (NPRM §IV.B, ¶¶179-185)

In order to increase consortium buying and enable all applicants to benefit from demand aggregation and more competitive prices, there are two concrete measures that the FCC can implement without compromising program controls.

First, the FCC should exempt from E-rate procurement rules all state contracts for E-rate services and equipment that were procured in accordance with state laws, regardless of whether the State first posted a Form 470. There are numerous reasons to support this proposal. Most states have extensive procurement codes with which they must comply and many of these are much more comprehensive than the E-rate procurement rules. The codes typically require an extensive competitive bidding mechanism and have procedures for ensuring that bid awards are compliant with state law. Indeed, administrative and judicial tribunals exist to allow losing bidders to challenge awards. These procedures ensure that awards fully comply with state law. Most, if not all, state governments have agencies that specialize in procurements, similar to the General

Services Administration of the federal government. State laws and codes comparable to the Federal Acquisition Regulations govern these procurements.³³

Not all state contracts can be procured according to the E-rate application cycle because of numerous pragmatic factors. State contract procurement cycles often span multiple years. Even if a Form 470 is posted immediately at the conclusion of the Form 471 application cycle, say in April, there is no guarantee that the contract document can be signed within a year such that the contract would be available to applicants for use in the next E-rate funding year. If the contract is signed in the second year after the Form 470 was posted, then applicants risk being denied for funding due to reliance on a “stale” Form 470.

Also, the E-rate competitive bidding process duplicates the state procurement process and in some instances conflicts with it. The *Queen of Peace* decision is the poster child example of this concern. In that case, the FCC concluded that whenever applicants post Form 470s for equipment and wish to name a specific vendor, they must use the words “or equivalent” in order to accept bids from other manufacturers with comparable equipment. This poses perhaps an irreconcilable problem for most states’ procurement requirements. Many states make multi-vendor awards for equipment contracts. The Request for Proposal will specify numerous different manufacturers and will accept bids from all vendors. An award is made separately and a contract is signed separately for each product line. The inclusion of the words “or equivalent” can be added to these Requests for Proposals, but it appears to exalt form over substance. In these situations, there clearly is a competitive bid and the most cost-effective price is chosen for each manufacturer’s product line, with or without the inclusion of the words, “or equivalent” in the RFP. If the state procurement code prohibits the use of the phrase “or equivalent,” or the contracting authority resists adding this phrase because of concerns about jeopardizing the integrity of the long-established state bidding

³³ The website of the National Association of State Procurement Officials (NASPO) has a wealth of information about state procurement practices. <http://www.naspo.org/>

process, the entire master contract is then invalidated for E-rate purposes and each applicant must post a separate Form 470 application to procure the equipment. This process is duplicative and wastes everyone's resources: the applicants' and Administrator's alike.

Second, the process for state replacement master contracts needs to be streamlined if the contracts will continue to be required to be competitively bid via the E-rate Form 470 process and rules. In addition to adopting new rule and/or procedures to review and approve multi-year contracts, SECA urges the Commission to develop new ways to streamline State Replacement Contract ("SRC") procedures to permit easier applicant use within a given funding year.

Most state master contracts ("SMCs") are bid and negotiated for a wide variety of state entities, not just for E-rate applicants. As such, expiration dates for such contracts are seldom aligned with the E rate funding year. If an applicant seeks to use a SMC expiring in the midst of a funding year, current state replacement contract ("SRC") procedures require the applicant to file two FRNs, one FRN specifying the current contract holder for services from July 1 through the contract expiration date, and a second FRN specifying a "dummy SPIN" for services to be received from the contract expiration through the end of the funding year (June 30 for recurring services and September 30 for non-recurring services). Once the contract is rebid mid-year, all applicants must update the "dummy SPIN" with the actual SPIN of the new (or renewed) contract holder. This involves extra steps for both USAC and the applicants. The SRC process is further complicated in the following situations:

For non-recurring services, an applicant is often uncertain as to when the installation will occur. As a result, full — and, therefore, duplicative — funding must be requested under both FRNs.

Because of possible delays in state procurement procedures, a SMC may not always be seamlessly rebid and renewed as of the existing contract's expiration date. In some cases, the existing SMC may not be rebid at all and a decision may be made to extend the existing contract.

Because that decision is not known as of the time of the E-rate deadline, however, applicants must follow the SMC procedure.

One way to simplify and streamline the SRC transition process for an applicant would be to permit it, without requiring a separate competitive bid, to sign an individual E-rate contract addendum with the current SMC service provider agreeing to extend SMC pricing through the end of the funding year. The addendum would have to signed prior to the applicant's submission of its Form 471 for that funding year. Using this premise, only one FRN would be required and the FRN would indicate a contract expiration date corresponding with the end of the funding year (rather than the SMC's earlier mid-year expiration). The E-rate addendum should also include provisions to (a) permit the applicant to take advantage of any price decreases in a renewed SMC with the same provider; or (b) request (but not require) a SPIN change in the event another provider is selected in the SMC rebid.

B. Increasing Transparency (NPRM §IV.D, ¶¶ 191-201)

SECA opposes any efforts to require applicants to comply with a federal regulation to routinely post or submit contract and bidding documents beyond the existing document submission requirements that are part of audits and selective or other special compliance reviews. State laws already govern the disclosure of public documents and posting this information to a federal website would duplicate these efforts. This is not an appropriate role for or use of the Administrator's resources and such efforts will not help lower prediscout prices for applicants. Creating and maintaining such a data base is an extremely burdensome task and does not seem to be of much use. Indeed such a proposal is completely at odds with the FCC's decisions of the past 20 years to forebear from requiring telecommunications carriers to file tariffs with prices set forth therein. This forbearance was undertaken in recognition of the fact that the communications industry has evolved from a monopoly to competitive marketplace. SECA is concerned that creating some kind of virtual bulletin board containing vendor prices for contracts and/or bids for services

would discourage, not encourage, robust competition and/or lower prediscount prices because vendors would refrain from submitting bids for fear of having to publish confidential or proprietary information.

In the event there are concerns that prices to E-rate customers are inflated above the prices charged to non-E-rate customers, the “lowest corresponding price” rule should be invoked and the vendors whose prices are in question should be examined. To implement a nationwide reporting system, however, in the absence of compelling evidence that this is a real problem, is a colossal waste of resources and will unnecessarily increase program inefficiency and complexity. This proposal should be abandoned.

VI. Streamlining The Administration of the E-rate Program (NPRM §V, ¶¶224-269)

A. Electronic Filing Of FCC Forms And Correspondence (NPRM §V.A., ¶¶227-231)

For years, SECA has urged the FCC and USAC to modernize the E-rate website infrastructure and all forms processing to make the program completely automated and electronically accessible. SECA is very pleased that USAC solicited comments on its SLD IT Modernization Initiative and hopes that its electronic infrastructure and processing systems will soon be updated based on the reforms decided by the FCC.

When E-rate first began making funding commitments in 1998, almost a generation ago, the technology for online processing of applications was primitive compared to the sophisticated systems now ubiquitously implemented for online transactions. In the intervening 15 years, additional online functionality has been introduced for E-rate stakeholders but the systems are segmented, fractured, non-intuitive, difficult to navigate and prone to crashing. USAC is to be commended for its recent request for input concerning E-rate systems’ redesign. SECA strongly believes there is a need for advanced data management systems in order to improve the overall

efficiency of the program. The SECA vision of an improved E-rate program includes improved system functionality that provides applicants with the online tools and access to data necessary to participate effectively and efficiently in the program.

SECA envisions a virtually paperless E-rate application process where all current functions would be conducted online via the E-rate Portal, comparable to a commercial online banking or other online accounting system. We believe that the cost of deploying a paperless E-rate process will quickly be offset with the savings that will be achieved from greatly reducing the time and personnel costs associated with the current manner of processing forms and certifications. There remain many paper processes that need to be fully automated and integrated into the data processing system; for example, there are still far too many certifications, Item 21 attachments, SPIN changes, service substitution requests, and invoice deadline extension requests, submitted on paper, fax or email.

A portal solution will provide aggregate information from a number of different sources, including disparate systems to authorized users in a managed single screen or system. This solution will give the applicant the ability to submit required information, retain and recall historical information that can be changed and modified throughout the life of the program. Likewise, the same interface should be accessible to the Administrator's personnel thereby enabling their review to be far more streamlined since all of the history of the applicant's request will be readily available.

The portal solution also will eliminate layers of bureaucracy, avoid duplication of effort, root out unnecessary complexity, and make the system more responsive and customer focused.

A portal solution will give applicants the ability to:

- Access all information submitted to the Universal Service Administrative Company. The applicant should have the ability to check the status of all forms and post-commitment requests.
- Review all submissions and check the status of pending processes.

- Manage all information submitted to the E-rate program. Applicants should have the ability to update school information at any time during the funding year. All forms should be viewable, editable, and re-creatable.
- Access a centralized starting point for various applications and provide a summary of information pertaining to those applications, much like how a car's dashboard provides centralized access to summarized information about various aspects of the car's critical details.
- Retrieve previous years' approved forms, edit and submit without starting anew.
- Upload all supporting documentation (i.e. Item 21 detail, etc.).
- Access all certifications at one time annually

A comprehensive portal solution will streamline the application process; provide oversight and support needed to make an effective decision about the information received. Allowing applicants to update and provide information at any time within the constraints of the rules (which may be amended to accommodate the new functionality of the portal) will reduce delays and unnecessary denials. It will also give the applicant the ability to update the information as it becomes available. Access to updated information will also reduce the amount of time needed to review applications.

A portal system will allow the data to be entered one time and accessed multiple times. The system should normalize existing data sources by reducing the need to store information in more than one location within the database structure. The portal system likewise will streamline the notification process to applicants. The system should provide online notifications which will reduce the need to mail paper correspondence. Many organizations (banks and credit card companies) offer users the ability to receive notices and information online versus mailing documents. Some states, like Colorado, are undergoing LEAN initiatives to reduce/remove paper processes. The FCC similarly encourages online filings and has extensive multiple online filing systems. The E-rate systems need to be updated for the 21st century too.

SECA would like to extend its support in defining the scope of a new system and we encourage the use of User Acceptance Testing when any improvements or changes are made to the Web site tools and functions in order to ensure that the new tools and functions work in the intended manner.

B. Speeding Review of Applications, Commitment Decisions, and Funding Disbursement (NPRM §V.C, ¶¶ 233-241)

SECA fully supports the “evergreen” review approach for contracts of three years so as to minimize the Administrator’s and applicants’ duplication of efforts. Indeed, with the introduction of the field for prior year FRNs in Block 5 of the Form 471 application for funding requests associated with multi-year contracts, SECA had hoped that there was already an established process for streamlining review of multi-year agreements. The three year funding application approach for contracts would be a natural extension of the hopefully existing streamlined process for review of multi-year contracts.

At the same time, SECA strongly disagrees with any attempt to limit the maximum period of a contract for three years. It often is financially advantageous to enter into a contract with a longer term or an initial three year terms with various extension options. This decision is best left up to the applicant and should not be prescribed as a national directive by the FCC. Limiting contracts to three year periods will likely increase, not decrease, prediscount costs.

C. BEAR Payments Should Be Sent Directly To Applicants. (NPRM §V.G, ¶¶259-262)

Since the inception of the program, SECA has advocated that BEAR Reimbursement payments should not be subject to the service provider pass-through requirement. The system is wrought with problems, including difficulties in obtaining BEAR service provider signatures, and having a form that is not available to be submitted and certified online (and the subsequent mathematical errors and administrative processing costs that result). But the single largest

problem with the monkey-in-the-middle reimbursement methodology is that some service providers do not remit the reimbursements to the applicants in a timely manner. It is extremely difficult for applicants to enforce the FCC rules for vendor payments of BEAR amounts. Vendors may not realize that a payment remitted by USAC to the vendor is a BEAR reimbursement that the vendor should remit to the applicant. Similarly, there is little if any way for an applicant or the FCC to be certain that vendors remit payment to the applicant within 20 days of the vendor's receipt of payment from USAC. In many situations involving BEAR payments, applicants face the arduous task of shaking their money loose from the vendor.

Further, there have been numerous occasions where service providers have filed for bankruptcy between the times that services were provided and reimbursement forms submitted. In this case, the Administrator has established an arduous and complicated process called the "Good Samaritan Process" where the applicant is required to find a telecommunications provider who is willing to act as the reimbursement pass-through agent instead of the bankrupt vendor.

As State E-rate Coordinators have repeatedly requested that service providers be taken out of the middle of the reimbursement process, we were repeatedly told that the current system was in place for two reasons: 1) Section 254 of the Telecommunications Act prohibited applicants from directly receiving USF funds, and 2) with funds going to the provider and not to the applicant, the Commission could only recover wrongly disbursed funds from the providers (which was supposed to be seen as a plus to the applicant community).

In terms of the latter argument, we note that the Commission has ordered the Administrator to collect improperly disbursed funds from the party responsible for program rule violation – whether applicant or service provider. Therefore, the rationale that the vendor-in-the-middle process somehow protects schools and libraries from returning funds no longer exists.

In terms of the first argument regarding the prohibitions in the Telecommunications Act of 1996, we have found no legal basis for this statement. The development of the BEAR Form was

undertaken by the Administrator, with oversight and approval of the FCC and Office of Management and Budget (“OMB”). The BEAR Form was originally developed to address those situations that arose frequently and regularly during the first funding year, and fell into three general categories. First, because of the pre-existing contract rule, which exempted contracts that were executed on or before July 1, 1997 from the competitive bidding process, some applicants already had been obliged to pay for telecommunications, Internet access and internal connections. Those applicants fully paid for those services using their funds. Second, and similarly, other applicants received funding commitment decision letters well after the start of the first program year, and decided to commence the receipt of and concomitant payment for services under contracts in anticipation of receiving a favorable decision letter. Third, the majority of service providers had not been able to establish the billing systems necessary to apply discounts on applicant bills during the first funding year, and therefore, relied on the BEAR Form as a means of providing discounts to their E-Rate customers.

Importantly, few if any of these situations were contemplated by the FCC in issuing its *First Report and Order* where it initially directed that service providers would provide discounts to applicants and seek reimbursement from the fund. The only mention of service provider reimbursement to applicants for services paid in full related to advance payment for multi-year contracts.³⁴ The Commission clarified that only the current year’s payments are eligible for discounts under E-Rate. Nonetheless, applicants may “use their own funds to pay full price for the portion of the contract exceeding one year (pro rata), and may request that the service provider seek universal service support for the pro rata annual share of the pre-payment. The eligible school or library also may request that the service provider rebate the payments from the support mechanism that it receives in subsequent years to the school or library, to the extent that the school or library secures approval of discounts in subsequent years from the Administrator.”

³⁴ First Report and Order, CC Docket No. 96-45, FCC 97-157 (Order released May 8,1997) at ¶544.

In fact, the *First Report and Order* made clear that service providers could not *mandate* applicants to fully pay for services and then seek reimbursement from the Administrator.³⁵ The Commission made clear that the discount methodology was adopted as a means of easing the administrative burden of E-Rate applicants and *not* because of any underlying legal requirement:

We conclude that requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries. For purposes of administrative ease, we conclude that service providers, rather than schools and libraries, should seek compensation from the universal service administrator. ... To require schools and libraries to seek direct reimbursement would also burden the administrator because of the large number of new entities that would be receiving funds.

Apparently, this language has been turned on its face and construed to prohibit E-Rate applicants from *voluntarily* electing to receive direct reimbursement through the BEAR Form. Initially established as a means of assisting schools, the discount reimbursement mechanism has become extremely burdensome and denied outright reimbursements in those situations where the service provider has failed to comply with the BEAR Form requirements.

While section 254(h)(1)(B) prescribes that service providers shall provide discounts to schools and libraries, and shall either receive reimbursement of those discounts from the universal service mechanism or treat the discounts as an offset to their contributions to universal service, the statute is silent as to how to address those situations where the applicant has already paid for the service in full. There clearly is no statutory prohibition against allowing applicants to receive reimbursements directly from the universal service mechanism.

Our above comments already explained the difficulties that applicants experience when they already paid in full for services on which discounts have been approved by the Administrator. Applicants have conveyed their frustrations to us time and again, and we repeatedly must explain to our constituents that the current program procedures preclude applicants from directly

³⁵ *Id.* at ¶586.

receiving the BEAR checks. The point here is that the current BEAR process further delays applicants' receipt of reimbursements of discounts, for no valid reason. If the program procedures were to be modified to permit applicants to directly receive BEAR reimbursement checks, the workload of the Administrator and FCC would be decreased because the Administrator and FCC would no longer be required to seek compliance and undertake enforcement of the requirement for service providers to remit the BEAR payments to applicants. In addition, applicants would no longer struggle with their providers to pass on their entitled-to reimbursement funds and would not ever be in a position to have to use the "Good Samaritan Process" when their provider shuts its doors or files for bankruptcy prior to the completion of the reimbursement process.

VII. Other Outstanding Issues (NPRM §VI, ¶¶270-329)

A. The Children's Internet Protection Act (NPRM §VI.A, ¶¶271-275)

All school-owned devices using an Internet connection of a school that receives E-rate funding for internet access or internal connections must be filtered. If the device is not owned by the school and is using a school Internet connection, then CIPA does not compel the device to be filtered, but the school may opt to impose the filtering requirement as part of its acceptable use policy. For devices that are not school owned and are not using a school Internet connection (for example, a student owned laptop with an aircard or Smartphone with a data plan), CIPA does not compel filtering but again the school may choose to impose this requirement at the local level. Off-campus filtering of school-owned devices is not addressed by CIPA and this too should be a local school board decision whether to require the devices to be filtered off campus. If the school requires the device to filtered off campus, then the school should be free to decide whether it will provide the filtering or require the student (or his her family) to provide the filtering as a condition of receiving the school device for off-campus use.

B. Addressing Changes to the National School Lunch Program (NPRM, §VI.C, ¶¶282-293)

The Healthy, Hunger-Free Kids Act enacted in 2010 established the Community Eligibility Option (“CEO”) for the National School Lunch Program. The USDA phased in implementation of CEO over three years from 2011 through 2013 for ten states and the District of Columbia. In the 2014-2015 school year, CEO will be effective nationwide. Schools that participate in CEO no longer collect individual eligibility data from participating students, and therefore, poses a challenge to computing these schools’ E-rate discounts. At the present time, the CEO schools are required to use that last available NSLP collection as their means of establishing their level of poverty.

Unfortunately, these levels are frozen in time back to the date prior to which the schools signed on for CEO and may not be true representation of the current poverty level.

Because CEO is based on direct certification, there may be some students who qualify for NSLP but whose families do not participate in one of the programs on which direct certification is based. USDA, the agency who administers NSLP, currently applies a multiplier of 1.6 to “credit” the school for these additional NSLP qualifying students who do not appear in the direct certification data. The multiplier may be adjusted between 1.3 and 1.6 after the 2013-2014 school year.

The six specific questions that the FCC asked about CEO and SECA’s responses are as follows:

1. How should the NSLP eligibility of students enrolled in schools and school districts electing the CEO as opposed to those schools and school districts not electing the CEO be computed? Should there be two separate tracks for computing discounts?

Answer: The NSLP eligibility calculation of non-CEO schools should continue along the present course. The NSLP eligibility of CEO schools should be prescribed as a separate track and the schools should not have the option of using the non-CEO method of computing discounts.

2. Should alternative ways to measure the poverty level for eligible schools and libraries that is minimally burdensome for schools and provides an accurate measure of poverty be considered, such as U.S. Census Data?

Answer: SECA members are not experts in the use of U.S. Census data but generally note that the many questions posed in the NPRM about this concept illustrate the many challenges of using community based data rather than school-specific data. The implementation of the new metric will undoubtedly be fraught with many administrative

questions and issues, and the surrounding uncertainty of the answers to those questions will confuse and befuddle applicants and the Administrator. SECA prefers to continue using NSLP data and make the necessary adjustments for CEO schools rather than abandon NSLP in favor of a new metric.

3. Should CEO schools and school districts be required to use a federally-approved alternative mechanism, such as school-wide income survey, to determine their level of poverty?

Answer: No. As a practical matter, the only available federally-approved alternative mechanisms available to a CEO school for determining the poverty level of a student is an income survey. This is because all of the other federally-approved alternative methods are subsumed within the Direct Certification approach, on which CEO was founded. Surveys are notoriously difficult to administer and to obtain completed results. Historically, concerns for privacy of the family's personal financial information, pride and discomfort with accepting outside assistance have hampered the receipt of completed surveys. The challenge of receiving completed survey will be exacerbated further now that the family will have no personal incentive to return the completed form (since the student is already enrolled in NSLP by virtue of CEO).

4. Should Direct Certification data with a multiplier be used to determine a school's poverty level?

Answer: Yes. USDA is the expert agency in administering NSLP and has concluded that a multiplier is the appropriate approach for establishing the complete portfolio of the school's students who qualify for NSLP (not just those students who qualify based on direct certification). The FCC should defer to USDA in this area and rely on the annual multiplier that USDA uses to compute NSLP reimbursements for CEO schools.

5. Are there scenarios under CEO schools should be provided a mechanism to qualify for higher discounts than they would under whatever default approach the FCC adopts?

Answer: No. Such annual adjustments should not be permitted. The annual fluctuations are likely to be modest based on historical experience with E-rate discounts and is not worth the administrative complexity that would be required to implement such a procedure.

6. What procedural and administrative issues are impacted by the CEO?

Answer: The same reporting approach that has been historically used for states to report the NSLP eligibility of schools should continue to be used, and there should be a designation of whether the school participates in CEO.

C. Wireless Community Hotspots (NPRM, §VI.E, ¶¶319-323)

This should be permissible policy but not mandated. It should be a local school board decision but if adopted, network infrastructure must be secured from the internal networks of the schools so as to protect against network intrusion.

Providing the “hotspot” services during non-school hours would encourage the sharing of resources and create a more efficient use. To have the bandwidth / services basically sit idle from 3:00 pm to 7:00 am daily is not an efficient use. But because there are numerous technical considerations and actions required for implementation, this policy must be left to the discretion of local school boards.

D. Procedures for National Emergencies (NPRM, §VI.F, ¶¶324-329)

The establishment of defined procedures for providing relief to applicants experiencing a natural disaster is sensible and prudent since each year unpredictable weather wreaks havoc in various places across the nation. As SECA is writing these comments, flooding in Colorado is an active emergency. Last year there was Super Storm Sandy. There were other catastrophic emergencies in recent years such as the floods of Wisconsin, Iowa, New Hampshire, North Dakota and Michigan. There are too many to name them all but so many states, and schools and libraries in those states, are and have been adversely affected by these disasters and must rebuild.

SECA proposes that the emergency relief procedures should be modeled after the Katrina relief order. With the Katrina Order, the FCC got it right. The Order was not some new emergency relief that was being offered through the Federal Emergency Management Agency (FEMA). The Order simply allowed for the affected schools and libraries to obtain much needed assistance from a federal agency and an administrator that they have been working with for years, the FCC and USAC. That Order allowed students to have full access to the schools’ networks and Internet access service as soon as they returned to class. That Order allowed libraries to open up their doors to the community to give them access to their e-mail, their loved ones, and the outside world long before they had access to basic phone services anywhere else.

All the FCC needs to do is to adopt the Katrina Order as an Emergency Relief Order. The only point that the FCC missed and should address in its permanent rules relates to the time frame

for rebuilding efforts. Disaster recovery efforts do not follow the E-rate funding year, or even a calendar year. There were numerous schools after Hurricane Katrina that were unable to rebuild and use their E-rate funding within the three year E-rate window allotted to them. E-rate funds for disaster recovery should remain available to affected schools and libraries until their respective disaster recovery efforts have been completed.

Specifically, per the Katrina Order, the Commission is encouraged to establish rules that:

- The procedures for providing relief from natural disasters should be invoked whenever a Presidential Disaster Declaration is made, for the schools and libraries located in the area included within the Declaration;
- Identify a lead agency in the impacted state that will agree to examine affected facilities and to certify that E-rate eligible damage and/or destruction occurred;
- Require affected applicants to certify that the services and products on this application will be solely used to restore the network to the same pre-disaster degree of functionality;
- Require affected applicants to certify that any duplicate funding (i.e. insurance, FEMA, community resources) in excess of 90% of the cost for products or services requested on this application will be returned to the Universal Service Fund;
- Provide flexibility and rule waivers to allow applicants to dispose of equipment, obtain service substitutions to redirect funding where it is needed, allow transfer of services and equipment to other buildings, recognize that students may be transferred to other buildings;
- Waive documentation retention requirements for affected applicants; and
- As noted above, the period of time for using the E-rate funding for disaster recovery should be extended to accommodate the time frame of the reconstruction efforts.

The FCC should also ensure, if it has not done so already, to appoint a liaison with the Federal Emergency Management Agency who is familiar with E-rate and who can assist applicants. If a state or territory without a State E-rate Coordinator (or whose coordinator was taxed with other responsibilities) or if any state or territory felt it would be beneficial, SECA members with experience concerning E-rate disaster relief efforts would be happy to assist other states in their time of need

VIII. Conclusion

The State E-rate Coordinators' Alliance respectfully requests the Federal Communications Commission to adopt an Order consistent with the recommendations set forth above.

Respectfully Submitted by:

/s/ Gary Rawson

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