STATE E-RATE COORDINATORS ALLIANCE

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

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

Initial Comments of the State E-rate Coordinators' Alliance
Regarding
Further Notice of Proposed Rulemaking Set Forth In FCC Order 14-99

I. Introduction

The State E-rate Coordinators' Alliance (SECA)[1] fully appreciates how much work the FCC and USAC are currently undertaking to implement the July 23, 2014 landmark E-rate Reform Order. We know that the FCC staff as well as our own members, like many other stakeholder groups, have more than enough work "on our plate" for the coming months. That is why it is all the more impressive that the FCC has continued to receive comments on the important remaining issues that must be addressed in order to continue reforming the E-rate program. We applaud these efforts and very much appreciate that Chairman Wheeler and the agency have made E-rate one of its top priorities.

[1] SECA accomplishes its work through the resources of its 98 individual members who provide statewide E-rate coordination activities in 46 states and 2 U.S. territories. The four states not represented in SECA are Maryland, Minnesota, Montana and Nevada. The territories not included in SECA are Guam and Northern Marianna 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.

From our experience both prior to and especially subsequent to the issuance of the FCC's July 23, 2014 landmark Order, we know that applicants are anxious to understand the new landscape and to ensure that adequate E-rate funding will be available to meet their networking needs under the new program structure. Applicants are particularly concerned about the *predictability of Category 2 funding:* whether there will be available Category 2 funding in the year in which they seek to install broadband equipment and upgrade their infrastructure, and when they will submit their related E-rate funding requests. These concerns are particularly worrisome for those applicants in lower discount bands who traditionally have been unable to access Category 2 funding but have used discounts from Category 1 funding to help defray their equipment purchase costs. These and all other applicants will experience a reduction in Category 1 funding immediately in FY 2015 due to the eligibility elimination of certain services and phase-out of others. Yet these applicants have no way of knowing whether there will be sufficient money available to meet their Category 2 needs. Of course, the same concern applies to higher discount applicants but these applicants have a much better chance of receiving funding approval for Category 2 in the year in which they submit their applications, just as they have in past years.

While applicants may understand from a theoretical and policy perspective that the program needed to evolve from funding of all telecommunications services to a broadband-based program, there is no question that these reforms will have an adverse impact on school and library budgets. SECA members that have already conducted training and outreach to their constituents have heard this refrain repeatedly. Applicants simply do not understand how the new framework will lead to more predictable Category 2 funding especially considering that the new C2 rules and funding commitments may only apply for FY 2015 and FY 2016.

SECA believes that the adequacy and predictability of funding is the most crucial issue for the FCC to address in the next Report and Order. While there are other important issues which we will also address herein, we believe that the funding issue has to be addressed first in order for all of the other pieces of the E-rate puzzle to fall into place.

II. Additional Permanent Funding Is Needed To Meet Applicants' Needs for Broadband Services.

Even with the austerity measures adopted in the July 23rd Reform Order, there simply will not be enough funding to meet applicants' demand for broadband services and equipment – even with the new C2 budget formulation.

We calculate that in the next five years, the aggregate funding shortfall will be $4.5 billion or greater, which is $900 million per year on average. Our methodology includes the following calculations and assumptions based on publicly available data:

- Beginning in FY 2015, there will be $45 million in additional funds available that previously were used to fund webhosting, email and voice mail services. See Footnotes 358 of July 23rd Order.
- The phase-out of voice services when completed in FY 2019 will result in savings of $860 million. See Footnote 324 of July 23rd Order. The phase-out will occur over four years with a reduction of 20 discount percentage points each year.
- Growth in Category 1 demand will be at least 7% each year, consistent with historical trends of 2011-2014. This is a very conservative estimate because it does not take into account the full breadth of anticipated increased demand due to expanded connectivity goals and expanding need for bandwidth. This information was derived from reviewing the last four years of demand estimates that SLD submitted to the FCC.
- The historical denial rate of 8%, as mentioned during the April 2014 quarterly meeting of the Schools and Libraries Committee of the Universal Service Administrative Company, will continue to be applicable.
- Inflation will grow at 2% per year in accordance with historic trends.
- The amount of funding needed to meet the total demand of Category 2 funding using the new budget approach is $5.0 billion in accordance with the FCC's July 23rd Order; however, per the Funds for Learning analysis published on September 5 it appears that this amount may be closer to $5.5 billion.[2]
- In addition to the annual funding cap SECA estimates there will be an additional $1 billion of carry-forward funding – monies that were collected but not disbursed in prior years – that will be available.

Based on these calculations, SECA has computed the following analysis:

[2] See https://www.fundsforlearning.com/blog/2014/09/balancing-the-e-rate-budget (September 5, 2014). The analysis is based on the new discount calculation methodology for school districts. Libraries are not included. Also, the amount of funding for districts may be understated because the minimum amount of $9,200 was computed based on district size and not per building.

E-rate FY	Savings from Voice Service Phaseout and Ineligibility of Email, Voice Mail and Webhosting	7% Increase in Category 1 BB Demand (based on FY 2014 Category 1 Demand)	Category 2 Demand	Total Demand Net of 8% Denial Rate	Inflation Adjusted Cap (Assuming 2% Inflation)	Total Funds Available	Deficit
2015	$217,000,000	$2,582,184,817	$2,000,000,000	$4,215,610,031	$2,462,094,047	$3,462,094,047	$753,515,984
2016	$389,000,000	$2,762,937,754	$1,000,000,000	$3,461,902,734	$2,511,335,928	$2,511,335,928	$950,566,806
2017	$561,000,000	$2,956,343,397	$1,000,000,000	$3,639,835,925	$2,561,562,646	$2,561,562,646	$1,078,273,279
2018	$733,000,000	$3,163,287,434	$1,000,000,000	$3,830,224,440	$2,612,793,899	$2,612,793,899	$1,217,430,540
2019	$905,000,000	$3,384,717,555		$3,113,940,150	$2,665,049,777	$2,665,049,777	$448,890,373
Total							**$4,448,676,982**

As noted above, the total funds available for FY 2015 include the additional $1 billion of carry-forward funds. While the FCC has previously announced that there will be $1 billion of funding available for Category 2 in FY 2015 and FY 2016, SECA is unclear on whether the $ 2 billion is *additional* funding to add to the annual cap or whether the $2 billion is the announced new approach for funding of Category 2 and is part of the annual funding cap. SECA's calculations included the additional $1 billion due to review of USAC quarterly filings and estimated that there would be $1 billion of carry-forward funds available.

A modest adjustment of any of the assumptions will result in an increased deficit. For example, if Category 2 demand is $5.5 billion rather than $5 billion, the deficit increases to $4.9 billion. If the growth in Category 1 demand is 8% rather than 7%, the deficit expands even further to $5.3 billion, and if the denial rate decreases by just one percentage point to 7%, due to program simplification or applicants' improved efficiencies, there will be a funding shortage of $5.5 billion.

Equally as important to the overall insufficiency of the annual funding cap, there is an overarching concern of applicants that Category 2 funding will not be available in the year in which they need to upgrade their Wi-Fi and other internal connections. According to the Funds for Learning's September 5th analysis, more than $3 billion of funding is needed to fully fund the 85% and 80% discount bands. This means that for all practical purposes, applicants with a discount band of lower than 80% -- the same group that historically have been unable to access Category 2 funding -- will need to wait at least until FY 2017 to have a viable chance to receive funding approval. Yet, as the evidence in this proceeding has already established, schools and libraries need to install or augment their existing broadband capabilities inside their buildings now – not several years from now. The arbitrariness and unknown aspects of this new model cannot be minimized.

SECA has three proposals that, if adopted, would go a long way toward addressing these concerns. ***First,*** the FCC should implement a permanent increase to the funding cap that captures the inflation adjustment from the inception of the program until the cap began being adjusted prospectively for inflation beginning in FY 2010. This adjustment is estimated to be worth $800 million per year, which would nearly address the estimated shortfall. The E-rate program has the dubious distinction of being the only universal service mechanism that has been underfunded almost 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. This adjustment to the funding cap is long overdue in order to ensure 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 plainly stated requirements have not been met year after year when demand has exceeded available funding.

Second, the FCC should front-load the available funding to the fullest extent possible. That is, all eligible funds available for carry-forward should be allocated to FY 2015 and not spread out over multiple years. This approach will allow as many applicants as possible to be funded as promptly as possible. If need be, the FCC should authorize a higher annual funding cap temporarily for FY 2016 and FY 2017 based on a review of FY 2015 demand in order to ensure there are sufficient funds available to meet applicants' needs.

Third, the FCC should allow applicants to install broadband equipment in their buildings in the year in which they need to, even if E-rate funding is not available in that year, and conditionally approve the application subject to availability of funding in a later year. The FCC could approve the application in the year in which it was submitted, but the funding disbursement would be delayed to a subsequent year. This flexibility will assist those applicants that can make alternative financial arrangements other than E-rate funding to make the initial purchases. Further, applicants' risk of funding denials after purchasing and installing the equipment and those applicants that are willing to assume the risk of funding denial. These applicants still would have to submit their applications and undergo a full PIA review subject to the risk of denials or funding reductions. Nevertheless, at the very least, these applicants would not be penalized due to the lack of available E-rate funding in the year in which they proceeded with their broadband equipment installations.

We believe that the combination of these three proposals are essential in order to ensure that E-rate funding truly is sufficient and predictable to meet the needs of the nation's schools and libraries.

III. Imposing a Maximum Contract Duration Will Impede Rather than Facilitate The Efficiency of Multi-Year Contracts.

SECA shares and supports the FCC's goal of ensuring that E-rate funds are used as efficiently as possible. We do not believe, however, that regulating the maximum length of the term of E-rate contracts will promote efficiency, and in fact may hinder competitive pricing. There is no evidence that longer-term contracts result in higher prices. The FCC's underlying theory is that due to declining technology prices, shorter-term contracts will reflect lower prices and will allow applicants to avoid being committed to paying higher than the market rate.[3] Yet in the same paragraph the FCC recognizes the benefits of longer-term contracts that increase administrative efficiencies, and allow for more favorable terms over the life of the contract.

The Lowest Corresponding Price (LCP) requirement already in effect, and that the FCC emphasized would be the subject of stepped-up enforcement, should obviate concerns about applicants' payment of non-competitive prices. LCP requires service providers to offer schools and libraries the lowest price that is offered to other similarly situation customers. This obligation governs the entire term of the contract and not just the price initially agreed to by the parties when the contract is first executed.

Each state has its own procurement rules that govern the maximum term of state contracts. These contracts typically are used for many purposes and by many government entities and not just for E-rate. The use of such contracts for E-rate purchases may be simply an afterthought and by no means is the primary driver for the procurement. If the FCC were to prescribe a maximum contract term, this would be especially disruptive to those broadly used state contracts. In essence the states would have to enter into special contracts that are just for E-rate procurements in order to meet the FCC's maximum contract length rule. Yet most states have centralized procurement agencies, and are not directly involved with the E-rate program. These agencies may or may not be willing to take on the additional workload of having to conduct specialized E-rate procurements. Imposing the maximum contract term could very well lead to fewer state master contracts because the agencies may be unwilling to conduct additional, specialized procurements just for E-rate applicants. This would have a very deleterious effect on the availability of competitive pricing since these contracts often reflect competitive prices based on large volumes. In some situations the state master contract may be the only way in which broadband services are made available to all applicants throughout the state, including hard to reach and extremely high

[3] July 23rd Order at ¶274.

cost areas. Eliminating these master contracts would very much undermine the availability of competitive prices for broadband services.

The maximum contract term could very well conflict with state law. Some states do not prescribe a maximum duration and a FCC rule that did impose a maximum term would therefore be in conflict with state rules and laws. Other states prescribe a maximum duration that is greater than five years. Still other states may have a general rule for contract duration to be five or less years but may allow for extensions past five years in special circumstances.

The FCC specifically stated that "no commenter has offered an example of a state law that would require service contracts to extend beyond five years and the record demonstrates that many of these state and local procurement laws do not allow contracts beyond five years."[4] This misstates the issue. The question the FCC should ask is not whether state law ***compels*** a service contract to extend beyond five years but rather whether state law ***allows for*** a service contract to extend beyond five years. If state law permits contracts that are longer than five years, a FCC rule that would restrict such contracts to five years would conflict and interfere unnecessarily with state law.

SECA has polled its members and reviewed the 2014 Annual Survey of State Procurement Practices published by the National Association of State Procurement Officials. We have identified at least 24 jurisdictions where state law permits state contracts to exceed a five year term. The provisions governing contracts signed at the state level are as follows:

Eleven states have no prescribed maximum term for contracts signed at the state level.

Connecticut	North Dakota
Hawaii	Oklahoma
Massachusetts	Oregon
Michigan	South Dakota
Minnesota	Washington
New Jersey	North Dakota

Five states have a prescribed maximum contract that is more than five years for contracts signed at the state level.

Iowa	6 year maximum term
Arkansas	7 year maximum term
Montana	10 year maximum term
New Mexico	8 year maximum term
Nebraska	8 years maximum term for transport; 6 years for Internet contracts

[4] July 23rd Order at ¶ 274, citing only to Knox County Comments.

An additional eight states have a general rule of five year contracts but allow additional extensions beyond five years depending on the circumstances:

Delaware	5 years typically; longer terms may be justified
District of Columbia	5 years typically but longer terms may be justified
Florida	5 years typically; longer terms may be justified by exigent circumstances
Georgia	5 years typically as a best practice; longer terms may occur
Louisiana	5 years typically; longer terms may occur
South Carolina	5 years typically; 7 years when approved by Chief Procurement Officer
Texas	4 years typically; longer terms may be justified and approved
West Virginia	5 years typically; longer terms may be justified by exigent circumstances

All of these jurisdictions' policies would be needlessly constrained should the FCC insist on imposing a five year maximum contract term.

Further, there are differences in the way that states administer their master contracts and that may result in different definitions of a contract expiration date. For example, in New York the master contracts, administered by the Office of General Services ("OGS"), are often multi-vendor awards establishing broad terms and conditions. Use of many of these awards typically requires "mini-bids" and results in individualized agreements between vendors and customers. These "agreements" may specify termination obligations separate from the underlying OGS contract expiration date. Specifically, most of the awards under the NYS OGS Statewide "Comprehensive Telecommunications Equipment & Solutions" contract were first established in 2009 and do not expire until March 17, 2024.

Conversely, a number of connectivity contracts in New York, bid by consortia on behalf of their members, carry expiration dates by which the members can request services at the contractual prices. But services, when installed, may be subject to termination charges for minimum service periods (typically 36 or 50 months for connectivity services) extending beyond the underlying contract termination dates.

The above information applies specifically to contracts signed by states. With respect to school district and library contracts, there may be no time limitation at all. For example, Iowa, Pennsylvania and South Dakota do not impose a limitation on the maximum contract length. Moreover, there are often very legitimate reasons why 5 year contracts have extension terms. It is often costly to rebid a network and conduct a large-scale procurement – sometimes a 2-year or longer process depending on the size of the network and any needed network reconfiguration or reengineering. To require states or districts to limit their entire contract length to five years means they would have to begin their rebid process just three years into their 5 year contract. Also, sometimes a network is being rebid at the end of five years and the new network cannot be installed immediately upon termination of the existing contract. In those cases, the initial contract's extensions terms are invoked to allow time for the new network to be installed, while not causing any disruption in service.

Should the FCC believe that some measure is needed to ensure that all contracts contain competitive pricing throughout the entire term, we believe that it is sensible to require the parties to review the contract price terms at least once every five years or preferably even more frequently to ensure that the prices comply with the Lowest Corresponding Price requirement and are reflective of current market conditions. We note, however, that the FCC is responsible for enforcing the LCP requirement – not applicants.

The LCP requirement is similar to a "Most Favored Nation" clause in that it requires the vendor to provide a price reduction to an existing customer when the vendor offers a lower price to a comparable customer. In most instances it is up to the customer to enforce a "Most Favored Nation" clause. If the customer does not pursue a claim, the vendor is not obligated to proactively notify the customer of the availability of more favorable pricing. By requiring both parties to periodically evaluate the competitiveness of the contract pricing during the term of the agreement, the FCC can ensure that the prices paid for E-rate services will not only be competitive at the commencement of the agreement but throughout its duration. Also, by requiring periodic review of pricing to ensure LCP compliance, service providers will be on notice that they must maintain sufficient records of which customers are similarly situated to E-rate customers so that the vendors will ensure their ongoing compliance with the "Lowest Corresponding Price" regulation. This process will be greatly aided by the new pricing transparency initiatives adopted in the July 23rd Order that will allow all applicants to see the prices paid by other applicants.

It simply does not make sense for the FCC to mandate a "one size fits all" maximum length of contract rule at the national level when there are less restrictive measures available to attain the same result of facilitating maximum pricing efficiency.

IV. Standardizing The Reporting Of NSLP Data Will Not Necessarily Improve Program Efficiency.

SECA generally supports the FCC's goal of trying to implement efficiencies that will simplify the program for applicants and streamline the administrator's review of the applications while maintaining robust program integrity. But because of key differences in the ways that states vary in their collection and processing of the NSLP information, it is not possible or preferable to prescribe rules to govern all reporting of NSLP information.

As a general principle, SECA agrees with the notion that schools that participate in NSLP should not be permitted to use alternative discount mechanisms such as income surveys to calculate the discount of the school (for individual school applicants) or the discount of the district (for schools that are part of a school district or consortium application). Alternative discount mechanism information should be permissible only when the school does not have NSLP information available.

The FNPRM posed additional questions concerning the specific month or period of time for which the NSLP and enrollment information should be reported on the Form 471 application. The FNPRM asked whether all states and territories report NSLP data to FNS by November 15th every year and cited to Form FNS 742 – School Food Authority (SFA) Verification Collection Report. This form is used by LEAs to report NSLP information to the state agency. There is an opportunity for a one month extension or even further extensions beyond the one month. In addition, it is our understanding that this does not include all NSLP eligible students such as those identified through the direct certification process. Accordingly the use of the numbers reported in this form will not match the complete data set of students who are participating in NSLP.

In other situations this data may not accurately reflect the universe of students who are the recipients of E-rate services in each school building. For example, some schools may serve lunch to students enrolled in an auxiliary program that is not part of the school district but for NSLP reporting purposes the students from that program are included in the district's NSLP report to the State. Those students should not be included in the student counts reported by the applicant on their E-rate application since the students are not recipients of services in schools associated with that district.

While the FCC has a laudable goal of trying to standardize the information used by applicants for discount calculations, it is focused on the wrong data. The FCC should require applicants to use the October enrollment and NSLP information from the most recent year available. In some cases, the available data will be from the preceding October, and in other cases, the data may be one year older. In this way, the same reporting month will be used by applicants and by the states for their preparation of the valid files. Then the SLD will be able to minimize the discount discrepancies that occur and must be reconciled through additional outreach to applicants.

V. Encouragement of Consortia

SECA is gratified to see the FCC's appreciation of the importance of consortia purchasing and applications. We concur with the FCC's assessment of the benefits of consortia as described in the FNPRM.

Policies to encourage consortia must consider the benefits to members as well as the incentives to assume the responsibility of serving as a consortia lead. We believe it is equitable and essential for consortia Form 471 applications to receive an additional five (5) percent discount. This additional discount will serve as both an incentive and acknowledgment of the additional work required of consortia applicants to prepare Form 471 applications and to administer the consortium members throughout the year.

Lead consortium members have numerous additional unique administrative responsibilities:

- Preparation of and timely collection of letters of agency or comparable documentation to demonstrate each consortium member is informed of and consents to their inclusion in procurements and preparation of Form 471 applications.
- Preparation of and timely collection of Form 479 CIPA compliance forms for consortium that apply for and receive Internet access service and/or internal connections funding.
- Billing and collection of each member's share of service costs and reflection of the consortium member's proportionate share of discounts.
- Coordination of service delivery with vendors to each consortium member.
- Conducting periodic procurements for services to be delivered to consortium members.
- Coordination of installation of service and periodic upgrades to services to consortium members (when bandwidth is increased to members, for example).
- Collection of all of the information components required to be reported on Form 471 application such as bandwidth and circuit types and speeds for Block 5 and budget information for the certification in Block 6.
- The need to address complex PIA inquiries that may impact 50 or more individual participants in the consortium.

By providing a five percent additional discount on E-rate services, the consortia approach will be attractive to school and library applicants as well as consortia leads. By offering this financial incentive, all consortium members will benefit, and consortia applications will be encouraged.

The FCC has asked for comments on whether the proposed consortium definition offered by the Education Coalition should be adopted in order to set forth the prerequisites for qualifying for the additional five percent discount. The Coalition's proposal is well intentioned but has one fatal flaw that needs to be modified in order to allow for a definition that ensures all state network and regional consortia will benefit from the five percent discount.

The last factor of the Coalition's proposed definition would require that each consortium is open to all eligible schools including public, non-public and charter schools, as well as all libraries. This factor is so expansive that it would negate the benefits of the five percent discount for even most state network applications. For example, some state laws may prohibit funding to be allocated to nonpublic schools so that E-rate consortium membership would preclude the inclusion of nonpublic schools. Other states have statutes that require the inclusion of public K12 schools in the state telecommunications network but may not include nonpublic and charter schools or libraries. Yet other states have large regional consortia whose membership is based on the organization's bylaws. Also, many states have regional network backbones that interconnect regional networks and so it is very important that any definition of consortia also include network backbone contracts and arrangements.

Accordingly the fifth criterion should be eliminated entirely or be amended to read, "Membership in the consortium should be open to all eligible entities within the organization that created the consortium, in accordance with criteria established by state law, policy or regulation." This modest change will allow consortia to form in a manner that maximizes their benefits while being respectful of state law.

SECA does not support changing the consortium discount methodology from a simple average to a weighted average approach at this time. The introduction of a new approach for computing consortium discounts will unduly complicate the program at a time when there are numerous other changes occurring with respect to the manner of computing discounts: moving districts to the simple average approach and changing the rural/urban designation process. SECA members are studying this issue and will address the merits of it at a later time. In any event should the FCC decide to establish this change, it should not take effect until FY 2016 or beyond.

VI. 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:

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September 15, 2014