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
IN RESPONSE TO DA-14-308
WIRELINE COMPETITION BUREAU PUBLIC NOTICE OF MARCH 6, 2014
SEEKING FOCUSED COMMENT ON E-RATE MODERNIZATION

I.   Introduction

The State E-rate Coordinators' Alliance (SECA) appreciates the opportunity to provide additional comments and recommendations for reshaping the E-rate program to best meet the broadband needs of students and library patrons for 21st Century learning and online access. The challenge ahead requires compromises and tradeoffs in light of the reality that funds for E-rate are limited. Our recommendations reflect this awareness. Some of these changes undoubtedly will be financially painful to applicants, because they will involve de-funding some existing services such as voice telephone services, and represent the loss of a revenue stream upon which schools and libraries have grown reliant. As set forth herein we also encourage the FCC to revise the discount matrix for Priority 2 internal connections equipment and cabling so that the maximum discount will be 70%. We believe that these measures as well as others described herein are essential for allocating limited E-rate resources as efficiently as possible.

II. The FCC Must Take Immediate Steps To Implement The Full Effect Of An Inflation Adjustment To The $2.25 Billion Cap Beginning In 1997.

SECA members understand the necessity to redirect E-rate funding toward broadband and that means relinquishing funding for other non-broadband related services.   We have heard from our constituents that such changes, particularly with respect to voice services, will be financially painful and require reallocation of local resources. At the same time, E-rate applicants are excited about the FCC's commitment to ensure that applicants will receive periodic funding allocations for broadband equipment inside buildings and see this as an acceptable tradeoff for eliminating non-broadband services from eligibility – but only if the broadband equipment funds are guaranteed on a regular, predictable basis.

Even after these changes are implemented, however, we believe that the current funding cap is simply not enough to meet the broadband needs of the nation's schools and libraries. The E-rate program historically has been the only oversubscribed universal service support mechanism that has been capped since its inception in 1996. While other programs later may have been subject to some measures to curb growth, E-rate stands alone with the dubious distinction of having been capped since 1997 and consistently under-funded.

We understand that the FCC may prefer to gain some experience with the new program parameters before deciding whether a permanent increase to the funding cap is needed; however, we urge the FCC to act immediately to fund the inflation adjustment necessary to account for its full effect since the program's inception. Implementing the inflation adjustment from program inception, rather than only adjusting prospectively from 2010, is fair and reasonable to ensure that 2014 E-rate dollars fully account for inflation. Had the FCC adjusted the cap from 1997 forward, the current cap would be **$3,291,322,429,** based on the CPI-U.[1] This represents an increase of $877.5 million over the FY 2014 existing cap of $2,413,817,693.

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[1] http://www.usinflationcalculator.com/

We urge the FCC to immediately implement the full effect of the inflation adjustment when it issues its modernization order later this spring or summer.   Such a step is important to show that the FCC is willing to implement *all* of the changes necessary to ensure that students and library patrons will be able to enjoy and use the updated broadband services.   None of the changes that the FCC may make will be successful if the fund is not right-sized and there continues to be a huge unmet need. There is little incentive for applicants to accept defunded services and a lower maximum discount for Priority 2 funding if the majority continue to be shut out of this important funding stream. Without adding the full inflation adjustment to the funding cap, applicants are simply negotiating against themselves by willingly accepting the defunding of services and other restrictions. We urge the FCC to adopt the full inflation adjustment from the inception of E-rate.

III. Limitations To The Scope Of Eligible Services Should Be Implemented Beginning In FY 2015 And Phased In Until 2017.

SECA agrees with the FCC that E-rate should be reshaped into a broadband-centric program in order to enable all students and library patrons to have access to high speed Internet service

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Inflation Calculator		
If in	1997	(enter year)
I purchased an item for $	2,250,000,000.00	
then in	2014	(enter year*)
that same item would cost:	$3,291,322,429.9'	
Cumulative rate of inflation:	46.3%	
	Calculate	Print

*Learn how this calculator works. This US Inflation Calculator uses the latest US government CPI data published on March 18, 2014 to adjust for inflation and calculate the cumulative inflation rate through February 2014. The Consumer Price Index (CPI) and inflation for March 2014 is scheduled for release by the United States government on April 15, 2014. (See inflation rates since 2003.)

throughout school and library buildings. We believe that most parties agree with the broadband foundation upon which modernization is based.

Broadband connectivity to schools and library buildings, and universal connectivity and availability of broadband to students and patrons inside these buildings, is the new paramount goal of the E-rate program. The services and equipment that are needed to achieve this goal should be the focal point of the program. This means that all of the equipment and services that are not directly related to broadband service to and within buildings should be phased out, but in a manner that provides adequate advance notice to applicants and that occurs at the same time that applicants are able to receive funding for essential Priority 2 equipment and services.   In considering this transition, we are mindful of the need for program simplification and will not support or propose changes that will add complexity and confusion. We believe that our multi-faceted approach accomplishes these objectives.

We have learned from experience that clear and concise rules are essential for program efficiency. Whenever new rules are established, there are *always* operational implications that need to be considered and addressed to provide clear direction to applicants, service providers and the SLD. Rules with exceptions or rules that are not fully fleshed out give rise to confusion, complexity and inefficiency. In our comments, therefore, we have tried not only to explain clearly our suggestions and recommendations but also to highlight the operational considerations that we believe will need to be addressed before implementing the new proposals.

### A.	Priority 2 Eligible Services And Equipment Should Be Redefined Effective FY 2015.

The Eligible Services List for Priority 2 equipment and services needs a dramatic haircut to include only essential broadband equipment such as wireless access points, controllers, switches, and routers, as well as the associated cabling and installation for wireless connectivity and software needed

to operate these components. No other peripherals, such as caching and filtering, should be included even if they do increase network efficiency. We need bright lines concerning Priority 2 eligibility. Any type of ambiguous standard that makes program administration more complex for all stakeholders and introduces uncertainty for applicants must be avoided.

All other equipment and services in the current Priority 2 category should no longer be eligible for funding. While other equipment and services on the current Eligible Services List may be important, none are integral to the availability of broadband connectivity inside classrooms and public library rooms. Likewise, maintenance services should be eliminated from funding as they have been the subject of prior concerns about wastefulness and cost efficiency. By allowing for bundled three-year bundled warranties of eligible equipment, we believe that the FCC already adopted a sensible approach that appropriately resolves these concerns. The only change we would suggest to warranty eligibility would be no-cost warranties (for any period of time) that are offered to all customers of the manufacturer for the specific components.

These Priority 2 eligibility changes should be effective in FY 2015 so that the FCC and stakeholders can begin immediately to refocus the program to better meet its broadband goals. By making these changes quickly, we believe that more Priority 2 resources will promptly become available to fund more applicants' broadband equipment purchases.

These changes reflect the kind of hard choices that the FCC must make in order to ensure that the limited Priority 2 E-rate resources will be available to all schools and libraries, and not just the most impoverished ones with the highest discount. Any equipment or service that is not mission critical to broadband connectivity should be eliminated from eligibility.

B. Priority 1 Services Should Be Redefined Beginning In FY 2015 And The Changes Should Be Phased Through Until 2017.

We agree that voice phone services should be eliminated from E-rate funding in order to redirect these funds for broadband. All things being equal, if resources were unlimited these subsidies should continue in order to meet the statutory obligation of providing discounts on all telecommunications services.   Given the reality that resources are limited and must be used as efficiently as possible to promote advanced telecommunications, we have concluded, albeit with much reflection and some reticence, that voice phone services should be phased out of the E-rate program.

We agree that a gradual phase-out is necessary to provide adequate time for schools and libraries to identify other budget resources to replace the E-rate funding stream for these services. Identifying local funds to replace E-rate financial support is not an easy task and will undoubtedly require close scrutiny and reallocation of local resources.

We believe that the 15 percentage point phase-out over five years as proposed in the Public Notice is too complex for applicants, will be difficult for the SLD to administer, and will slow down the processing of applications. We do not know whether the SLD's processing system is capable of incorporating this change. If the current system cannot be retrofitted, we fear that the SLD will have to manually process every Priority 1 FRN to identify whether the FRN includes voice services and then to manually calculate the reduced funding amount. Presently the SLD uses streamlined processes for relatively low dollar funding requests. In recent weeks, we have seen an unprecedented pace of SLD's review and processing of FY 2014 funding requests even though the filing window ended on March 26, 2014. We have long been proponents of quicker issuance of funding commitment decisions letters and it seems promising that SLD is destined on this course for FY 2014. This progress should be sustained into the future and any countervailing measure that would impede timely issuance of funding commitment decisions letters prior to July 1 should be rejected.

Even if the SLD can administer the percent eligibility phase-in approach, it will be extremely complex to explain to schools and libraries. Should they apply for 100% of the cost and the SLD's systems will do the calculations on what percent is eligible? If this is the procedure and if the If so and the applicant then also does deducts the 15% from the pre-discount price on top of the SLD's 15% cut, and then the SLD deducts another 15%, the number of appeals that will ensure is daunting. We understand the FCC's desire to 'let applicants down softly' but if the economics are the same in the end, applicants want and need simplification – not quasi-eligibility statuses. We believe that a better way to phase-out services should occur by establishing a schedule by funding year defining when specific services will no longer be funded. Starting with FY 2015, we recommend that all cellular, webhosting and email services should be eliminated from funding.

SECA proposes that all other voice telephone services – including hosted VOIP, SIP trunks, PRI, etc., should no longer be funded beginning in FY 2017. We believe that by making this announcement in an order issued in the spring or summer of 2014, applicants will have nearly three years to plan for this change. We chose FY 2017 as the midpoint year of a four year phase-out that the FCC mentioned in the Public Notice that would have begun in FY 2015 and ended in FY 2019. We also think that FY 2017 is a significant year because the FCC may have already fully allocated the additional $2 billion that has been identified for use in FY 2015 and 2016 stemming from changes in cash management practices. The full elimination of voice services in FY 2017 will free up additional resources for broadband expenditures.

C.   Other Changes To The Prioritization Of Funding Within The Priority 1 Category Should Not Be Made.

There were numerous questions and ideas put forth in the Public Notice to create options for "super-priorities" within Priority 1 funding such as providing incentives for deploying high capacity broadband connections (¶ 26); providing a higher discount for broadband services deployment (¶28);

prescribe the manner in which installation costs should be funded by E-rate as part of recurring costs (¶29); how to prioritize funding in the event there is not sufficient money to fully fund all Priority 1 broadband installation requests (¶31). While the Public Notice accurately stated that far too many schools and libraries lack affordable broadband access, we view all of these ideas as unnecessary and see them as unduly complicated to administer. In Section VI of these comments, SECA outlines an alternative solution that is a more affordable for applicants while also ensuring responsible use of the E-rate funds. (This proposal was articulated in the SECA comments and reply comments in response to the 2013 Notice of Proposed Rulemaking).

Paragraph 36 of the Public Notice requests comments on reintroducing the technology planning requirement for Priority 1 services. We strongly oppose the possible re-introduction of the technology plan requirement for Priority 1 procurements and in fact believe that technology planning has outlived its usefulness and should be eliminated altogether as a federally mandated E-rate requirement. It was an important tool back in 1997 when many applicants were first coming online and needed to plan their technology purchases and create an initial implementation schedule. While acknowledging the importance of technology planning, it is not needed to document that applicants can effectively use the services for which E-rate discounts have been requested. This information is captured on Block 6 of form 471 now and is subject to review via Selective Review or during audits. Further, the law that established technology planning at the federal level, EETT, has been rescinded and most states lack the resources to administer the review and approval process. Also, many states have evolved from the old separate technology plan process in lieu of a comprehensive strategic planning process that already encompasses technology. For these reasons, we strongly encourage the FCC to repeal the entire technology plan requirement – even for Priority 2 requests – beginning in FY 2015.

IV. An Overhaul To The Rules For Allocating Priority 2 Funding Is Essential.

The Public Notice recognizes the criticality of making changes that will guarantee that all applicants may receive periodic Priority 2 funding.   We believe that the linchpin to E-rate reform is expanding and guaranteeing access of Priority 2 funding to all applicants. Without this change, many applicants' broadband needs remain underfunded. Without installing adequate equipment and facilities (such as appropriate cabling) inside buildings for broadband coverage, it does not matter how much bandwidth is delivered to the building door (or communications closet) as the infrastructure in buildings will remain a broadband chokepoint.

SECA does not believe that any single Priority 2 proposal will succeed in guaranteeing access to all applicants. Instead, the FCC must adopt several measures that, taken together, will provide the greatest measure of predictable funding to schools and libraries. Each proposal is discussed in detail below.

A. Reduce The Maximum E-Rate Discount From 90% To 70% For Priority 2 Expenditures.

Reducing the maximum discount for Priority 2 funding from 90% to 70% will require applicants to plan their purchases more carefully than ever before, ensure that funds are allocated as cost effectively as possible and will allow limited funds to be disbursed to more applicants.

The discount matrix was established by the FCC in 1997 based entirely on circumstantial and anecdotal information. No evidentiary or experiential information could be consulted since E-rate was a new paradigm from a traditional grant system for dispensing educational technology funding. In setting the maximum discount at 90%, the FCC largely relied on the Joint Board's recommended discount

matrix subject to minor tweaking. [2] In its Recommended Decision, the Joint Board offered the following explanation of the discount matrix which is noticeably devoid of any rationale for the maximum discount of 90%:

> We recommend that the Commission adopt a rule which provides support to schools and libraries through a percentage discount mechanism because we find that such a mechanism would establish incentives for efficiency and accountability. First, requiring schools and libraries to pay a share of the cost should lead them to avoid unnecessary and wasteful expenditures because they would be unlikely to devote their pre-existing budgeted funds to purchases that they could not use effectively. Second, a percentage discount encourages schools and libraries to seek the best pre-discount price and to make informed knowledgeable choices among their options, thereby building in effective fiscal constraints on the discount fund. In fact, we understand that state or school or library boards generally require schools and libraries to seek competitive bids for all procurements above a specified minimum level, and we would expect a percentage discount mechanism to initiate the competitive bid process.[3]

The maximum 90% discount for Priority 2 services and equipment makes it impossible, year after year, to meet the needs of lower discount applicants. The E-rate program annually fails to meet the twin Congressional goals explicitly cited when the current discount matrix was established. First, the discounts must ensure affordable access to and use of the services pursuant to 47 U.S.C. §254(c)(3) and second, the E-rate mechanism must be a specific, sufficient and predictable support mechanism under 47 U.S.C. §254(b)(5). Lower discount applicants do not have sufficient funding in the absence of E-rate to achieve and keep pace with growing broadband connectivity needs. Applicants never know ahead of time whether there will be sufficient funds for Priority 2 until after the application cycle is completed and a demand estimate is prepared. There is absolutely no predictability or certainty of the Priority 2 funding stream in the current system.

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[2] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *First Report and Order* (released May 7, 1997) at ¶493.
[3] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision* (released November 8, 1996) at ¶ 549.

Even if the annual cap is increased, the current discount matrix is not sustainable. Most applicants have stopped applying for Priority 2 funding knowing that it is a futile effort. Once the cap is increased, these applicants likely will apply for Priority 2 which will further increase demand.

The Priority 2 maximum discount should be lowered to 70% in order to allow more applicants to receive this funding.   Requiring applicants to contribute more of their own funds will improve efficiency in the allocation of funds. Applicants will need to ensure that their purchases are needed and are as cost effective as possible. While applicants may prefer to retain the current maximum discount, the lower discount applicants feel equally strongly that they should have an opportunity to access Priority 2 funding.

In order to achieve the simplification goals that are part of E-rate modernization we recommend using a single matrix discount for Priority 2 that applies to all applicants regardless of their rural or urban location. We adjusted the matrix to reflect a balance between the former urban and rural classifications. Our recommendation is:

NSLP	P2 E-rate Discount %
Less than 1%	20%
1% - 19%	30%
20% - 34%	40%
35% - 49%	50%
50% - 74%	60%
75% - 100%	70%

By reducing the maximum P2 discount, the FCC will allow E-rate funding for Priority 2 procurements to reach more applicants on a regular basis. The primary beneficiaries will be applicants that have a current discount of 70% or lower. It is these applicants that have been unable to qualify for Priority 2 E-rate discounts in any year and have been shut out of Priority 2 funding opportunities for the past 10 years -- with one exception.[4]   If you ask any of these applicants they certainly will confirm that

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[4] In FY 2010, the FCC decided after the fact to fund all Priority 2 requests. Applicants did not know this in advance so many of the lower discount applicants did not apply for P2 funding in that year and did not benefit from this ruling.

a lower discount on some P2 funding is better than no discount on P2 funding which is the situation they have experienced for at least the past 10 years. The higher discount applicants, those with current maximum discounts of 80% and 90%, will have to rely on a greater percentage of their own resources to meaningfully use their E-rate funding. But given the history of these applicants' consistent and repeated receipt of Priority 2 funding year after year, this compromise seems like a fair bargain to strike.

Further, by changing the maximum discount for Priority 2, applicants will need to contribute a greater share of local revenues toward their E-rate purchases which will further ensure their mindfulness in the planning and procurement process. This approach also should ameliorate the need for any kind of dedicated Priority 2 set aside annual fund. Such a dedicated fund would simply create yet another confusing and unnecessary rule that would have to be implemented and administered.

SECA estimates that based on 2011 E-rate P2 funding requests with a discount of 71% to 90%, if these discounts were modified in accordance with our recommended revised discount matrix, there would be a reduction of $583 million in demand. By making other downward adjustments to the discount matrix in accordance with our recommendations, additional savings could be achieved. The Priority 2 funding demand by percentage point is data provided by USAC as part of the analysis of the FY 2011 funding demand submitted to the FCC.

FRN DISCOUNT	PRIORITY 2 DEMAND	PREDISCOUNT AMOUNT	SECA PROPOSED DISCOUNT	SECA REVISED FUNDING DEMAND MAX 70% DISCOUNT
70%	$5,814,004.28	$8,305,720.40	50%	$ 4,152,860.20
71%	$1,188,039.19	$1,673,294.63	50%	$ 836,647.32
72%	$1,586,917.26	$2,204,051.75	50%	$ 1,102,025.88
73%	$1,047,970.94	$1,435,576.63	50%	$ 717,788.32
74%	$1,529,804.48	$2,067,303.35	50%	$ 1,033,651.68
75%	$2,635,498.49	$3,513,997.99	50%	$ 1,756,998.99
76%	$2,836,949.47	$3,732,828.25	50%	$ 1,866,414.13
77%	$6,405,592.39	$8,318,951.16	50%	$ 4,159,475.58
78%	$2,779,969.69	$3,564,063.71	50%	$ 1,782,031.85
79%	$2,785,798.76	$3,526,327.54	50%	$ 1,763,163.77
80%	$447,298,554.33	$559,123,192.91	60%	$ 335,473,915.75
81%	$27,890,972.65	$34,433,299.57	60%	$ 20,659,979.74
82%	$42,868,257.24	$52,278,362.49	60%	$ 31,367,017.49
83%	$28,331,140.74	$34,133,904.51	60%	$ 20,480,342.70
84%	$59,878,179.63	$71,283,547.18	60%	$ 42,770,128.31
85%	$46,094,985.01	$54,229,394.13	60%	$ 32,537,636.48
86%	$113,478,325.43	$131,951,541.20	60%	$ 79,170,924.72
78%	$168,409,652.33	$215,909,810.68	60%	$ 129,545,886.41
88%	$137,466,506.89	$156,211,939.65	60%	$ 93,727,163.79
89%	$103,799,372.54	$116,628,508.47	60%	$ 69,977,105.08
90%	$1,142,182,586.61	$1,269,091,762.90	70%	$ 888,364,234.03
	$2,346,309,078.35			$ 1,763,245,392.20
			REDUCTION IN DEMAND	$ 583,063,686.15

By making this change, along with fully funding the inflation adjustment from 1997, the FCC could make an additional $1.46 billion available for funding in FY 2015, and likely show remarkable progress toward reliably funding all Priority 2 broadband related needs.

B. Applicants Must Be Guaranteed The Opportunity To Periodically Apply For And Receive Priority 2 Funding.

Each of the three different options set forth in the Public Notice for modifying the way in which Priority 2 funding is allocated has benefits and drawbacks.

While SECA recommended the "rotating bands" approach in our NPRM initial comments and we continue to believe this is a viable option, we would be remiss if we did not point out some concerns that would need to be addressed should the FCC decide to proceed with this option. Similarly we have identified other concerns and issues with the one-in-five rule and the per-pupil or per building annual budget approach. These concerns have crystallized as our group discussed the Public Notice in depth and really investigated the various choices presented by the FCC in an effort to arrive at a consensus for one best option. We do not believe there is one best option but firmly believe that whatever the FCC does, the Commission must adopt another core principle of reform to ensure that sufficient funds are available so that all applicants regardless of discount level are eligible to receive periodic funding of Priority 2 internal connections broadband equipment and cabling at least once every five years. Five years is commensurate with the industry-wide standard of the useful life of broadband equipment.

We also believe that whatever measure(s) are ordered, the discount calculations for all funding requests, both Priority 1 and particularly Priority 2, should be computed for school districts using the simple district average discount, and there should no longer be separate discount calculations for different buildings. This change was proposed in the July 19, 2013 NPRM and SECA wholeheartedly supports it as an important streamlining and simplification step as well as an important tool in equitably distributing funds. By eliminating building discounts and relying on one discount per district, consistent with the way in which districts manage their finances at the district level and not at the individual building level, or how state networks/consortia approach district and regional wide area network design, there will be far less "gaming" of discount calculations by creating FRNs that are made up of 80% and 90% discount buildings that are weighted in a manner to maximize the shared discount for the FRN and to try to obtain funding for as many 80% buildings as possible. By using the exact same method of computing library and district discounts, all applicants will be on the same footing and will have equal access to Priority 2 funds.

1. Rotating P2 Applications For Different Discount Bands.

Under this approach, all applicants in a particular discount band would be able to apply for and receive Priority 2 funding according to the library or district discount calculation in the pre-established base year. All entities would be assigned a discount based on the matrix using the simple average approach and there would be no non-matrix discounts since the weighted average discount approach would be eliminated. Beginning in the first year, all entities with the maximum matrix discount (70% under SECA's proposal; 90% using the current matrix) would be eligible to apply for and receive Priority 2 funding. If demand at this single matrix discount was greater than the amount of available P2 funds, then those applicants with the highest NSLP percentage would be funded first and applicants with the next highest NSLP percentage would be funded next, and so on until there were not sufficient funds available to fully fund the next NSLP percentage within the maximum discount band.

In the second year, the SLD would pick up where funding was left off in the first year, and Priority 2 funding would be made available to the next discount band (or the next lowest NSLP percentage in the 90% band if there was not enough funding available in the first year to fully fund all 90% requests). This approach would continue through as many years as necessary to ensure that all applicants at all discount levels had the opportunity to apply for and receive P2 funding at least once during the rotating bands cycle.

For this system to work, the applicant would need to apply for P2 funding for all buildings in the given year which would be difficult for school districts and library systems with many buildings to manage because it may not be possible to purchase and install equipment for dozens of buildings within a given funding year and local budget cycle. . Applicants also would need to be willing to retain the same base year E-rate discount for Priority 2 funding throughout one life cycle of the rotating bands so as to avoid changes to E-rate discounts from year to year that could be disruptive and confusing.

Applicants also would be unable to apply for and receive funding at any time other than their designated year even if they open a new building. The applicant would have to wait its turn until its

next opportunity to apply according to its discount would occur. Further if an applicant chose to forego submitting an application for Priority 2 funding during its assigned year, the applicant would have no recourse and would not be allowed to apply in a later year. Such exceptions should not be permitted in order to prescribe rules that are as easy to explain and administer as possible.

The biggest appeal of this approach is that all applicants, regardless of discount level, could confidently rely on the fact that at some point in the cycle of rotating bands – which we believe should last no more than five years – the applicant will be able to apply for and receive Priority 2 funding.

2.   Priority 2 One-In-Five Rule

By changing the current two-in-five rule to a one-in-five rule, along with discount reform, the potential exists for reducing the number of high discount Priority 2 funding requests from applicants year after year. Rather than assigning applicants the particular year in which they would be required to apply for Priority 2 funding, applicants would remain in charge of deciding in which year to submit their requests and retain local control of their budgeting.

All things being equal, the one-in-five approach has more appeal than the rotating bands approach because applicants could apply by building, and not be required to apply for all buildings in their district in a particular year which could create some budget hardships and challenges. But we are very concerned about the prospect that one-in-five may fail like two-in-five did, and there will not be adequate funding to meet all Priority 2 funding demand. This may result in continued denial of funding for lower discount applicants, and repeating exactly what happens under the current rules. Should this approach be adopted, we strongly urge that the district simple average be used to determine the discount, even though Priority 2 applications could be submitted at the building level.

Further, if the FCC decides to proceed with the one-in-five approach, such a rule change must be implemented in the short-term with a mandatory review of its effectiveness in the third year of its operation. If the FCC sees that funding demand continues to exceed available funds and five years will

not provide Priority 2 funding for all applicants, then other changes must be ordered to remedy this situation, including a permanent increase to the E-rate cap.

3. Annual Allocation Approach For Priority 2 Funding

Creating an annual allocation for Priority 2 funding for each applicant would provide some reassurance to schools and libraries that they could receive at least some money each year for broadband equipment. On the other hand, if the annual allocation was so meager that it did not meet applicants' needs, and the local funds required to be provided by applicants were disproportionately greater than using a more traditional discount matrix approach, applicants would not be able to meaningfully use their E-rate Priority 2 allocation to install the necessary broadband equipment.

We agree that there is a legitimate concern that some applicants have received a disproportionate amount of Priority 2 funding at the expense of other applicants. We believe that the best solution is not to impose a one-size-fits all approach on all applicants. Rather, there should be a per building cap and a per student cap funding floor on the amount of Priority 2 funding that any applicant should be allowed to receive.   The cap should contain a rebuttable presumption that should the applicant experience extenuating circumstances that justified more funding than the capped amount, the administrator would be permitted to increase the amount of approved funding for the applicant after a more fact-based intensive PIA review, or, alternatively, the applicant could seek a waiver from the FCC for the higher amount.

While SECA does not support a per-student or per-building annual funding allocation as the sole method of Priority 2 funding distribution, we do recognize that some applicants have received a highly disproportionate share of E-rate funding on a regular basis. This was likely due to the vast Priority 2 eligible services list, the fact that a 90% discount on anything is too good-a-deal to pass up, and commission-based consultants who receive payment based on a percentage of funding approved encouraging purchasing decisions. But coupled with either the 1/5 approach or the rotating band

approach, a funding floor and cap makes sense – both for the Fund, the vast majority of applicants, and the goal of providing broadband equipment to all schools within the next five years.

Our Reply Comments to the E-rate 2.0 NPRM set forth numerous questions that would need to be addressed should the Commission decide to use the annual allocation approach for Priority 2 funding. We incorporate them by reference and summarize them as follows:

1. How would total available funding be established each year?

Advocates of this approach earlier proposed to calculate the total available funds each year, *prior* to the opening of the application window, based on the inflation-adjusted annual E-rate collection cap plus roll-over. This amount would then be used to calculate the school/library funding allocation, the school Funding Floor, and the per-student and per-library budget caps. What rules and/or procedures would have to be changed to accomplish this? In particular:

- Currently the carry-forward decision is made in the second calendar quarter of each year. 47 C.F.R. §54.507(a)(3)(ii). Under the new proposal, this decision would need to be made in the third quarter of the prior calendar year, to provide sufficient time to perform the required calculations. What would have to be changed to advance the USAC/FCC's roll-over determination by roughly three-quarters of a year? At least in the first year, wouldn't this greatly reduce the availability of unused funds? This appears to require a rule change.

- How would the per-applicant accumulation of unused funds (see below) affect the USAC/FCC's ability to identify funds available for roll-over?

- If funds are to be pre-allocated using a formula, which are based on available data for the total number of K-12 schools and traditional public libraries (or, perhaps more appropriately, on estimates of the actual number of eligible applicants rather than the lower number of actual applicants), how conservative will these projections have to be?

- To avoid being overly conservative, leading to a greater underutilization of available funding, would the FCC reconsider taking advantage of the recurring ADA exemption (and perhaps advocate for a permanent exemption) to permit the over-commitment of funds? Otherwise this proposal would definitely exacerbate the current challenge regarding committed but unused funds.

2. How would – or even should --- available funding be split between schools and libraries?

- To the extent not all schools and libraries apply for E-rate, do the allocation formulas result in an excessive funding set aside which will aggravate the utilization problem?

- Are the average funding requirements of a school and a library roughly equivalent, particularly for the subset of libraries that confine their funding requests to telecommunications services in order not to be subject to CIPA?

- The school site count is limited to K-12 sites. What about separate educational service agency (ESA), Head Start, Pre-K, juvenile detention, and adult education sites which are eligible in many states?

- Does the school site count assume that NIFs (or NIFs with classrooms) are ineligible?

- Does the library count[5] include only traditional public libraries, or does it also include the many special purpose, but public, LSTA-eligible libraries? How would the funding needs of regional library systems (the equivalent of school ESAs) be addressed?

3. How do you count students and allocate school funding?

- In many — but not all — states, just as with sites as discussed above, ESA, Head Start, pre-K, juvenile justice, and/or adult education students are considered eligible for E-rate purposes. Wouldn't these students — particularly the growing number of Head Start and pre-K students — have to be incorporated in the total student count on a state-by-state basis?

- Many ESA students attend their ESA schools part time and attend classes in their home districts other times. For per-student budgeting purposes, would such double counting (which is not a problem under the current system) be permitted, or would the funding per student need to be allocated between the ESA and district? How would that work? Wouldn't that under-allocate funding to both organizations?

- How do you count students for new schools which have no students at all when they first apply for E-rate? Would it be appropriate to use the Funding Floor in these cases?

- With a slight adjustment for remote rural schools, the formula for calculating the Funding Floor for "small" schools is essentially based on providing those schools with a cap equal to the average amount any school could obtain. Note that based on this math, a "small" school might have up to 464 students.[6] Is this a small school?

- More importantly, this funding formula just doesn't work. Given the total amount of school funds available, this providing average funding to all small schools would means that not enough dollars would remain to fund the larger schools with more than 464 students. How is this workable? If the "smaller" schools receive average funding, the "larger" schools can't receive above average funding. Assume, for example, that 75% of the U.S. K-12 school sites have 464 or less students, and the remaining 25% of the schools average 900 students. Then the total requirement for

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[5] Note that the proposed library budget calculations, with respect to both total library funding and individual library budgets, is critically dependent on the assumed number of libraries to be covered.

[6] Based on the FFL/ERC formula, "small" size really means average size, i.e., the K-12 student population divided by the number of K-12 school sites (53,988,330 / 116,240 = 464) or, almost equivalently, the funding floor divided by the per-student budget cap ($31,422 / $67.65 = 464).

school funding, using the FFL/ERC numbers and ignoring the extra funding for rural remote schools, would be over $4.5 billion compared with $2.7 billion deemed available for schools.[7]

To make the math work, the Funding Floor for smaller schools would have to be administratively set below the average funding available for all schools; an accurate estimate would have to be made of the number of schools qualifying for minimum funding; and the Per-Student Budget Factor for the larger schools would have to be calculated accordingly. This is not an impossible task, but the estimation process would be somewhat more complex and less precise than suggested by the FFL/ERC formulas. [8]

4. *How would library funding be allocated?*

- What is a patron?

- Must it be someone with a library card? If so:
  - Do all libraries have cards?
  - How would PIA validate card counts?
  - Would libraries, like credit card companies, start mailing out unsolicited cards?

- Would it be based on the population within a library's boundaries? If so:
  - Does even a traditional public library have a defined service boundary or a defined service population?
  - How would a main library and its branches be handled?
  - How would more special purpose libraries -serving a diverse patron base be handled?
  - How would regional library systems be handled?
  - How would PIA validate these patron counts?

5. *How would an individual school or library Form 471 application be structured and reviewed?*

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[7] The calculation is 75% of school sites times the funding floor, plus 25% of school sites times 900 students times the per-student budget cap ((.75 x 116240 x 31,422) + (.25 x 116240 x 900 x 67.65) = $4,510,431,660)

[8] One other small problem with the FFL/ERC funding formula is that the remote rural adjustment factor appears to be incorrect. Instead of (total schools – rural schools) / (total schools), we believe it should be: (total schools) / (total schools + rural schools).

- Applicants may apply for less funding than would be available to them under the proposed budget cap because they may not have the local resources to pay for the non-discounted share or they may not need additional eligible services or equipment... How would applicant filing incentives change under this approach?

- SECA's concern is that the budget cap would come to be seen as an entitlement, encouraging applicants to apply up to their budget caps. Pressure to do so would come, not only internally, but from vendors and other third parties. On the other hand if the total amount of available funding was not requested, the amount of unused funds would be carried forward, which would exacerbate and not improve program efficiency.

- Once funding is requested on a per FRN basis, will an applicant have an opportunity to re-allocate FRN funding for other than a clerical or ministerial error? Such permission would be consistent with the concept of budget flexibility, but might create procedural complexities. For example:

- On a pre-commitment basis, would a decision by PIA to deny or reduce funding for one FRN permit an applicant to shift the affected funding to another FRN?

- On a post-commitment basis, could funding be shifted between FRNs as actual expenditure levels are realized?

- If the re-allocation of FRN funding is not permitted, how would this affect an applicant's filing strategy? Our sense is that it would encourage applicants to conservatively allocate funding requests to existing services with known funding requirements. Applying for twelve months' worth of new high bandwidth service, which might not actually be installed for six months while an application was under review, would be a waste of that year's E-rate budget resources.

- Another implication of a funding mechanism encouraging conservative estimates of FRN requests is that it may complicate the vendor SPI process (and the applicant budget process). Currently, the best applicant strategy for requesting FRN funding is to estimate slightly above expected needs so that actual funding needs are not exceeded. For recurring services, and from a vendor perspective, this avoids the need to terminate discounted bills midway through a funding year. FRN-by-FRN budget caps, requested conservatively, would turn this strategy on its end.

- Could application roll over unused funds from one year's budget to the next?

   6. How would consortium applications be handled?

   It is clear from the E-rate 2.0 NPRM that the FCC recognizes the importance of consortia

in meeting its goals of cost-effectiveness and broadband deployment. It is less clear, as in the

case with libraries, that the annual allocation approach is consistent with encouraging consortia applications.

- Would funding be set aside for state networks? Would it be a fixed amount or a fixed percentage? Would the funding set aside come from the school and/or library portions of available funds? If a set aside was dependent on the nature of a consortium's membership, how would it apply to a consortium made up of both schools and libraries?

- Would each consortium be subject to some type of budget cap? Would such a cap also be based on per-student or per-library calculations? How would such allocations work for consortium made up of both schools and libraries?

- Would an attempt be made to equate per-site budget caps for consortia to match those of individual schools or libraries? What complexities would this introduce in the calculations of individual applicant budget caps or in the total school/library/consortium allocation? If consortium budget caps were not equal to individual applicant caps, how would the difference be established?

- Would different procedures and funding amounts apply to state networks funded directly by the states and those funded directly or indirectly?

Applicant Apportionment:

- How practical would it be to obtain agreement from all consortium members to forego a portion of their individual budget caps for the benefit of one or more consortia? Would a consortium be able to refuse membership to a potential member not willing to allocate a preset or minimum portion of its budget cap? Even, how much of a disincentive would this entire budget allocation be for consortium leaders and/or members because of this increased layer of complexity and responsibility?

- Recognizing that many consortium applications include multiple FRNs, often with overlapping member participation, wouldn't member budget cap assignments have to be made on an FRN-by-FRN basis? If so, how difficult would it be for consortium leaders and consortium members to coordinate funding cap allocations in the final stages of application preparation?

- How will consortium discount rates be calculated? If the process for setting individual applicant discount rate for schools or districts is changed to a total student matrix discount, would a school-based consortium discount still be based on a membership average? If so, would this continue to be a simple average, or would it have to be weighted to reflect different percentages of member budget cap allocations to avoid giving equal weight to members.

- How will consortium applications be processed? Most specifically, what will PIA have to do to confirm that the budget cap for a consortium, or worse yet for each consortium FRN, does not exceed the amount allocated to that consortium by each of its members? Will this mean that a consortium application will not be reviewed until all individual member applications are reviewed? How would this encourage consortium applications?

SECA has real reservations about whether the proposal would help facilitate achievement of the proposed goals of E-rate. To the contrary, we believe that the proposal would increase program complexity and would not establish any opportunities for streamlining. At the very least before such a proposal can move forward, the numerous questions and issues raised above would have to be addressed at a much more detailed regulatory and procedural level and with considerable input from the school and library community.

Should the Commission decide to pursue the annual allocation approach, SECA believes that a preliminary step should be to convene an E-rate community task force comprised of federal and state representatives, applicants, service providers, and consultants. The objective of the task force would be to fully explore the feasibility of a budgeted funding mechanism and, if feasible, to develop the basis for a subsequent Notice of Proposed Rulemaking. SECA, through its membership, would be pleased to participate in this effort should it be undertaken.

V. Consortium Applicants Should Receive Incentives.

A. Additional 5% Discount For Consortium Applications.

Consortium applications allow for demand aggregation and bulk buying of purchases generally resulting in lower and more competitive pricing. Bulk buying and consortium applications should be encouraged in order to increase program efficiency and cost effectiveness. We believe that a financial incentive such as a modest 5% increased discount for consortium applications should be established. Further, where consortium members are required to pay their proportionate share of the non-discounted costs, the consortium lead member should be required to pass along the benefit of the higher E-rate discount to the consortium members. This would provide an incentive for applicants to join consortia because they would be guaranteed their own E-rate discount, and would provide fairness

for existing consortia members. The current rules aren't clear whether or not this is a current program requirement.

The consortia 5% additional discount should be available to statewide and regional consortium network applications for broadband services. The key requirement is to confirm that there is more than one consortium member listed on the application. In other words, applicants that are all part of one single organization that nonetheless apply as a consortium applicant should not be eligible to receive the additional discount.

B.   School/Library Consortium Benefits.

In many states, rural public libraries lack the necessary financial resources to establish and maintain their own high bandwidth broadband services and are confined to relatively low speed DSL or cable modem Internet service that is inadequate for accommodating the needs of the library patrons for multiple computers being connected online simultaneously at reasonable speeds. Coincidentally, in these same rural communities, a nearby public school district may be fiber-connected or have scalable broadband service at their disposal. While rare, SECA members are aware of situations where a public library has high speed access while the school or district in the same community does not have it. The incentive described herein would apply in the "reverse" situations as well.

Further, the peak periods of Internet demand are typically offset between the school district (8 a.m.-3:30p.m.) and the public library (3:30 p.m. – closing). Incentivizing the school district and library to collaborate and form a consortium that would be eligible to receive the additional 5% discount could help achieve higher speed broadband connectivity for libraries in a cost effective manner.

Many school districts already have knowledgeable technology personnel who work on the school technology needs. These individuals could lend technical support and assistance in working with the library to establish a connection between the school and library so that the library could

become part of the school district's high speed broadband network. We know of anecdotal situations where this kind of partnership may already be occurring but we propose for the FCC to use the 5% discount incentive to promote the formation of these kinds of arrangements nationwide.

C. Competitive Bidding Exemption for State and Regional Level Procurements.

Consortium applications that are filed by state level governmental agencies and regional agencies such as educational service agencies/intermediate units that have a state directive (either through law, regulation or written edict from a state level agency) to engage in technology procurements on behalf of districts- should be exempt from the E-rate competitive bidding rules since these agencies by law must follow their state procurement codes. The E-rate competitive bidding process is repetitious and redundant of state requirements and frequently state laws are in conflict with E-rate regulations. Superimposing the federal requirement on top of state laws has created all kinds of draconian results that complicate every step of the E-rate process for these applicants and their reviewers. One recent order that exposes this conflict most effectively is the so-called Queen of Peace decision.

D. Rescind the Harmful Effect of the Queen of Peace Decision on State Master Contracts.

Although the original intention of the FCC's 2010 Queen of Peace decision was to ensure that schools had the opportunity to purchase equivalent products that may be less expensive and not restrict themselves to a single vendor responding to an RFP, the decision has been applied to entirely nullify the eligibility of most state master contracts that are bid for technology equipment. In the past, these state entities would post a Form 470 application and would competitively bid master contracts for many different technology components sold by many different manufacturers. The state entity would

sign the master contract and share the Form 470 application information with E-rate applicants in the state that were qualified to buy from the state master contract. All of the E-rate applicants could rely on the state Form 470 application and state master contract, and submit funding requests based on purchases from the state master contract.   The E-rate applicant did not, therefore, have to conduct its own separate individual procurement using a Form 470 application at the district or library level and often a state-mandated newspaper advertisement, since the state entity had followed all applicable state and federal (E-rate) bidding requirements. Further, applicants could rely on the bid-protected, state-signed vendor contracts as the E-rate eligible, negotiated contracts and not have to negotiate their own contracts/terms and conditions, and obtain separate board approval before the contract was signed. These steps have added a minimum of six weeks to the E-rate application cycle because the efficiencies of the previously-used state contracts have been nullified.

In the Queen of Peace decision, the FCC ruled that applicants cannot specify a particular manufacturer on the Form 470 application unless the applicant also specified "or equivalent" and accepted and evaluated bids from all manufacturers. In the context of state master contracts for multiple technology manufacturers, state law is directly at odds with E-rate rules. The state master contract procurement may list multiple product lines – sometimes hundreds – and then selects the winning bidder (using the cost effective approach as required by E-rate) for each product line. Applicants, however, are precluded from using these contracts any longer since the applicants are required to consider "or equivalent" manufacturers' components. They have no way of complying with this requirement, in the absence of posting their own individual Form 470 application. Because of this harsh result that we believe was an unintended consequence, many state entities are no longer able to conduct E-rate compliant bulk purchases of E-rate equipment and services.

At the very time when thousands more schools and libraries will have access to Priority 2 broadband equipment funding, they have lost the ability to use previously-valid state master contracts. We urge the FCC to immediately repeal the Queen of Peace decision.   We also urge the FCC to

exempt state level agencies charged with E-rate eligible technology coordination and/or procurement from additional and duplicative E-rate competitive bidding requirements.

VI. Other Measures to Improve Applicants' Ability To Obtain Broadband

A. Applicant-Owned Wide Area Networks Should Be E-rate Eligible in Limited Cases.

As outlined in SECA's reply comments to the NPRM (November 8, 2013; pages 27-35), it may be in the best interest of some applicants AND the E-rate fund if school and library-owned wide area networks become E-rate eligible under very specific circumstances. SECA proposed the following to ensure such an option was only undertaken under careful guidance. The principle guiding this option reflected that the owned wide area network infrastructure is employed only in instances where self-construction is demonstrated to be the most cost-effective option after competitive bidding based on the following requirements:

1. Applicants interested in pursuing self-construction as an option must solicit bids both for services and for construction.
2. Applicants must also issue a Request for Proposal to solicit bids in addition to posting a form 470.
3. The Request for Proposal must contain sufficient detail so that the applicant will be able to show either that no vendor has submitted a bid to provide the requested services, or that the bids for self-construction were the most cost-effective option.
4. RFPs must provide sufficient detail so that cost-effectiveness can be evaluated over the useful life of the facility, if the applicant pursues a self-construction option.
5. Applicants that received no bids on a services-only posting may pursue a self-construction option.
6. Non-recurring costs in excess of $500,000 must be amortized over a minimum of three years consistent with existing E-rate requirements.

SECA also believes that the FCC should articulate the specific factors that need to be considered in evaluating the cost-effectiveness of the self-construction option compared to a leasing option:

- Life cycle of the cost-effectiveness analysis should be four to five years.

- Cost categories to be included: facility costs, construction (labor) costs, permitting costs, pole rental costs (if applicable), maintenance, on-premise equipment to use the service, network monitoring service.

- Eligible services should not be limited just to fiber wide area networks. In cases where microwave is the most cost effective solution, such infrastructure purchases should be allowed.

B. The FCC's 2007 "Macomb" Decision (FCC 07-64) Should Be Reexamined In Light Of The Critical Nature Of Broadband Access Reliability.

In a CCSSO speech last month, FCC Chairman Wheeler referred to "an article in the *Detroit News* about a Michigan elementary school in which students were midway through a 45-minute online math test when the system crashed as a result of inadequate bandwidth. Most of the students lost all of their work and had to retake the test." While inadequate bandwidth is clearly problematic, the complete loss of service, if only for minutes or hours, can be even more disruptive. With the growing importance of online learning and testing, broadband Internet services need to approach the "five 9s" level of reliability. As many school administrators have found, single-point network failures can no longer be tolerated. To avoid such system failures, an increasing number of networks are being designed to explicitly incorporate multiple carriers or at least multiple POPs.

In light of this need, it is unfortunate that USAC is interpreting the FCC's 2007 appeal decision in the case of the Macomb Independent School District (FCC 07-64) as a strict prohibition against the use of more than one network carrier. In last fall's applicant training, the SLD expressed the view that the use of more than one supplier for a given service was prohibited as a competitive bidding violation because services obtained from more than one provider could not all be the "most cost-effective." We are already seeing denials, COMADs, and repayment demands in cases involving multiple network carriers.

The Macomb decision stemmed from FY 2005 funding requests for which Macomb ISD selected three different carriers to provide T-3 circuits "to reduce the reliance of the school district on any single

provider's network during an outage — a practice called 'multihoming'." Interestingly, the FCC did not rule that multihoming was ineligible.   Instead, the FCC's concern was that the additional price incurred by using multiple carriers was not cost-effective Its decision limited Macomb's funding to the price level charged by the lowest-cost provider.

Now, ten years later and with a much greater need for network reliability, SECA believes that it is time for the FCC to revisit its Macomb decision and to provide greater clarity and guidance to USAC with regard to the need for, and the cost-effectiveness, of multihoming network designs.

SECA would like the FCC to define "cost-effectiveness" of broadband networks, not simply by "cost," but by "effectiveness." It must be understood that network reliability is a critical component of network effectiveness and that this approach of ensuring diversity (not redundancy) of suppliers is prudent technology planning for large scale networks such as those used by schools across the country. Further, SECA urges the FCC to clarify that applicants are permitted to select multiple service providers to provide the same service – as long as both services are needed and aren't being purchased as 'back-up,' and as long as both services are considered cost effective. We are confident that federal agencies have load balanced or multihomed networks or Internet access services, and schools and libraries should be permitted the same network benefits.

C.   Provide All Applicants with 27 Months Rather Than The Current 15 Month Service Delivery Deadline for Broadband Equipment and Cabling Projects.

Under the current E-rate framework, the funding commitment decisions letters for Priority 2 funding frequently are issued on or after March 1 of the funding year. Applicants, therefore, are permitted to have an additional year and three months to install the equipment or complete the cabling project. For example, in FY 2015, if a funding commitment decisions letter is issued on or after March 1, 2016, the applicant would have until September 30, 2017 to install the equipment or complete the work. If unable to do so within the specified time frame, the applicant must submit a request to the

administrator for a service delivery deadline extension by no later than the present service delivery deadline. If a late request for the extension is submitted, it must be approved by the FCC as a waiver of a rule.

Many applicants may need additional time to complete the work and would be unable to do so within the current time lines. We propose as a matter of program simplification and efficiency that the deadline for installing the equipment or completing the cabling project should automatically be September 30 of the year after the end of the current funding year. This will reduce the need for the administrator to process service delivery deadline extension requests and for the FCC to process requests for waiver of the service delivery deadline.

D.　Applicants Should Be Permitted to Begin Installing Priority 2 Equipment and Performing Cabling Projects as of June 1 prior to the Start of the Upcoming Funding Year.

Many districts' school year calendar has the last day of school ending in May or early June. The schools would like to be able use of the available time while students are on summer recess to be able to complete technology projects. We think it would be advantageous for applicants to be permitted to order and install equipment and undertake these projects as of June 1 of the preceding funding year. We do not see any concerns about waste, fraud or abuse with this proposal.

VII. Conclusion

The State E-rate Coordinators' Alliance respectfully requests that the Federal Communications

Commission adopt an Order consistent with the recommendations set forth above.

Respectfully Submitted by:

/s/ Gary Rawson
Gary Rawson, Chair
State E-rate Coordinators' Alliance
Mississippi Department for Information Technology Services
  3771 Eastwood Drive
Jackson, Mississippi 39211
601-432-8113
Gary.Rawson@its.ms.gov
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