

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the matter of:)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
_____)	

The following comments are submitted in response to the Commission’s Second Report and Order and Further Notice of Proposed Rule Making, FCC 03-101 in Docket No. 02-6, requesting comments on various aspects of the E-rate program, most specifically on issues of waste, fraud, and abuse.

Tel/Logic Inc. (d.b.a. E-Rate Central) is an independent firm providing E-rate application services to public and private schools. It holds the contract to provide statewide E-rate support for the New York State Education Department and, in this role, has been an active member of the State E-rate Coordinators Alliance (“SECA”) organized under the auspices of the Council of Chief State School Officers (“CCSSO”). E-Rate Central is also represented on the SLD’s Task Force for the Prevention of Waste, Fraud and Abuse.

E-Rate Central’s combined roles, both at the local applicant level and the national policy level, afford it a unique view of the program’s processes and benefits.

E-Rate Central has been involved in, and supports, comments being filed in this proceeding by SECA and the recommendations being prepared by the Task Force. The following comments are designed to reinforce and expand upon selected recommendations of both groups and to address several additional issues.

SUMMARY OF COMMENTS

Technology plans

1. The FCC proposal to indicate the need for an approved technology plan by the time services begin will clarify program rules.
2. The FCC should develop an explicit policy with regard to the technology planning objectives and requirements of the E-rate program.

Program violations: definitions, enforcement, and debarment

3. The extension of debarment actions to persons whose rule violations “threaten to undermine program integrity” should be deferred until such actionable rule violations are better defined and until procedures can be developed for timely enforcement.
 - a. The FCC should develop an explicit policy with regard to the competitive procurement objectives and requirements of the E-rate program.
 - b. Both the SLD and the FCC need to recognize that vendor assistance to schools and libraries for technology planning and E-rate funding are necessary and acceptable sales strategies and need not be deemed threatening to program integrity.
 - c. The SLD must develop better status indicators and relief procedures for applicants and vendors awaiting long-pending decisions on Form 471 applications.

Other Waste, Fraud and Abuse Issues

4. Encourage E-rate program compliance through proper incentives.
 - a. Reduce the maximum discount rate on Internal Connections to 70%.
 - b. Permit Billed Entity Number changes.
 - c. Raise the extrapolation threshold on income level surveys to 75%.
 - d. Compare FY+1 requests to FY-1 utilization during PIA reviews.
5. Reduce E-rate program complexities.
 - a. Simplify eligibility allocations.
 - b. Establish quarterly deadlines.

COMMENTS

Approved Technology Plans

1. **The FCC proposal to indicate the need for an approved technology plan by the time services begin will clarify program rules.**

There are currently at least three views as to the required stage during the E-rate application cycle by which time an applicant’s technology plan must be approved. In particular:

- As indicated in this NPRM, “Section 54.504(b)(vii) states that in its FCC Form 470 the applicant must certify that its technology plan has been approved...” Since Form 470 must be filed well before the start of the funding year, this implies that the plan must be approved at least six months before services start.

- SLD guidance, as expressed in its Process Flow Chart, states only that an applicant should “develop” a technology plan prior to filing a Form 470. The Reference Section of the SLD Web site, supported by the instructions for Form 470, indicates that “the Technology Plan approval process does not have to be completed to file Forms 470 and 471. In the "Status of Technology Plans" boxes on those forms (Item 21 on FCC Form 470, and Item 27 on FCC Form 471) the applicant can indicate that the Technology Plan will be approved by an authorized body by the time that services are received. To indicate services have started to flow, the school or library must file a FCC Form 486, and by the time of that filing the Technology plan must be approved.”
- The SLD statement, that the plan must be approved “by the time that services are received” reflects guidance given, but not widely publicized. The Form 470 and Form 471 do, in fact, permit an applicant to check that a technology plan will be approved, but do not specify any required timing. Item 8 on the Form 486 certifies only that the technology plan has been approved “as necessary.” As a result, many applicants believe — with some justification — that plan approval is not required until the filing of a Form 486 which often occurs months after the start of service.

If it is the intent of the E-rate program to have technology plans approved by the start of service, implementation of the FCC’s proposed rule would provide much needed clarification.

2. The FCC should develop an explicit policy with regard to the technology planning objectives and requirements of the E-rate program.

The technology planning requirements of the E-rate program appear to be evolving. In the first few years of E-rate, the technology plan requirement was little more than a formality. Five basic criteria were established for plan approval. The states were charged with approving plans but, since no funding was provided to do so, plan reviews tended to be cursory (unless states had other planning goals). Applicants were simply asked by the SLD to certify that their plans had been approved.

Over the last few years, technology plans have become more important in the E-rate process. SLD reference material on technology plans now indicates that the “information provided on [E-rate] forms should build on the foundation provided by the approved Technology Plan, by documenting specific implementation details and operational steps that are being taken under the plan.” Actual plans are now requested as a part of Selective Reviews and during field audits. This trend would suggest ever greater involvement by the SLD in applicant technology planning.

Before this occurs, we believe that an explicit policy should be debated and adopted regarding the role that the SLD and the FCC are to play in school and library technology planning processes. While a strong case can be made for better planning, it is not at all clear that E-rate should be the driving force in this development.

E-Rate Central agrees with a preliminary recommendation of the Waste, Fraud and Abuse Task Force “that the goals, requirements and procedures of the E-rate program’s technology planning be reviewed in line with the technology goals and planning requirements of the U.S. Department of Education and the Institute for Museum and Library Services.”

Program Violations: Definitions, Enforcement, and Debarment

- 3. The extension of debarment actions to persons whose rule violations “threaten to undermine program integrity” should be deferred until such actionable rule violations are better defined and until procedures can be developed for timely enforcement.**

E-Rate Central agrees wholeheartedly with the FCC’s goal of ridding the E-rate program of “bad actors” by debarment any person “whose willful or repeated violations of Commission rules threatens to undermine program integrity and result in waste, fraud, and abuse.” Before extending debarment procedures to non-fraudulent actions, however, the FCC should address two concerns.

- Many of the problems involving program waste, fraud, and abuse revolve around competitive procurement issues. As a result, many of the program’s rules are still in an evolutionary state. Until procurement rules are clearly defined, it would be unfair to penalize applicants or vendors for perceived “violations.”
- A significant number of FY 2002 (and even some FY 2001) applications remain pending, presumably for suspected procurement violations. Despite intensive Selective Reviews of affected applicants, conducted approximately a year ago, the SLD appears unable to resolve these applications. Assuming a stricter burden of proof for applicant or vendor debarment than for application denial, we believe that the SLD and FCC must demonstrate procedures for timely resolution of applications before addressing more complex debarment issues.

To address these concerns, E-Rate Central recommends the following:

- 3a. The FCC should develop an explicit policy with regard to the competitive procurement objectives and requirements of the E-rate program.**

Like technology planning, the competitive procurement requirements of the E-rate program appear to be evolving. Initially, the applicant requirement to post a Form 470 was deemed an adjunct to, not a replacement for, state and local procurement rules. Because requested services needed only be described in general terms, the Form 470 can be described, at best, as a “quasi” RFP. In many cases, its only practical benefit for vendors was to help them identify a specific applicant contact to provide additional information.

Originally, the FCC relied heavily on the premise that payment of the applicant's share of any E-rate eligible service provided sufficient incentive for that applicant to select the most cost-effective solution. With the recent concern over waste, fraud, and abuse, particularly in situations where the applicant's share is only 10%, we sense that the FCC is retreating from this premise.

Recent SLD guidance, Selective Reviews, and audits all appear to be leading to a requirement for more formal competitive bidding procedures. The latest list of Form 470 Reminders on the SLD Web site (a) recommends the use of formal RFPs; (b) sets forth an illustrative bid weighting paradigm; (c) lists bid evaluation documentation requirements; and (d) notes that the SLD may review "competitive bidding and vendor selection processes."

Before this guidance is transformed into actual competitive bidding rules, we believe that an explicit policy should be debated and adopted regarding the role that the SLD and the FCC are to play in school and library procurement processes. As an alternative to the adoption of ever stricter procurement rules, the FCC should consider the impact of a lower discount rate cap (as recommended below) as an inducement for applicants to make cost-effective choices.

3b. Both the SLD and the FCC need to recognize that vendor assistance to schools and libraries in technology planning and E-rate funding are necessary and acceptable sales strategies and need not be deemed threatening to program integrity.

One specific procurement issue that needs to be addressed is the role of vendors in the technology planning and E-rate application processes. It is important that a distinction be made between clear violations of procurement policies and valid vendor support activities. Admittedly, this is not always an easy distinction to make or prove — a key reason that we are concerned with the extension of debarment procedures without a more explicit procurement policy.

A recent set of SLD application denials illustrates the complexity of this situation. Several small New York State private schools received FY 2002 funding denials in part for the stated reason that "Similarities in Internal Connections description on Forms 470 associated with this vendor indicate that vendor was improperly involved in the competitive bidding process." The denials involved two specific vendors. Our analysis of fifteen Form 470s submitted by those applicants (and by other New York applicants who used the same vendors but whose applications are still pending) indicates there were similarities in most service request descriptions. In one case, we confirmed that the vendor had provided sample descriptive language. But conclusions regarding program procurement violations are more difficult to reach. In particular:

- Chapter 5 of the SLD's own Service Provider Manual states that "The FCC understands that applicants sometimes need to seek assistance from service providers in developing RFPs. Such assistance is permissible even if the service provider plans to submit a bid in response to that RFP as long as the service

provider's assistance is neutral." Similar vendor assistance in the preparation of more general Form 470 descriptions should be equally permissible.

- The service descriptions used in these particular Form 470s were generic in nature — not unlike sample descriptions provided by E-Rate Central in its New York State training sessions — and were completely vendor neutral.
- We found potentially troubling language in only two of the fifteen Form 470s. Item 12 listed specific bid conditions that required potential vendors to submit “detailed co. overview; your SPIN#; a min. of 7 references from installed schools; list of subcontractors who may be used; filtering security provisions incl. a CIPA statement” — conditions that might be deemed to be designed to discourage numerous bids.

As a part of developing a more explicit procurement policy, we believe that the SLD and the FCC should recognize that many applicants, particularly small schools and libraries, need considerable support in the development and implementation of their technology plans. Historically, much of this support has come from vendors who have taken the time to become familiar with their clients' needs and who have developed reputations for providing quality services. As a sales strategy, this is a classic “Marketing 101” approach.

As New York State E-rate coordinators, we have always encouraged local vendors to become more “E-rate friendly.” The better vendors know more about the E-rate process than many of their clients. Helping those clients through the E-rate application process is often just another phase of vendor support. Without that support, many of these schools and libraries would not be receiving E-rate discounts. Ironically, the more the SLD asks of these applicants in terms of PIA inquiries, Selective Reviews, and audits, the more support is required by the vendors.

As discussed below, many groups of FY 2001 and/or FY 2002 applications associated with specific vendors are still pending. These delays can be devastating to both the cash flows and reputations of the affected vendors. While some of these vendors may have indeed abused the competitive procurement process, others may have simply provided strong, unbiased support. Good companies should not be penalized for doing their jobs.

3c. The SLD must develop better status indicators and relief procedures for applicants and vendors awaiting long-pending decisions on Form 471 applications.

Despite diligent efforts by the SLD to set, facilitate, and meet completion targets for the processing of applications, a disconcerting number of these applications remain “In Review” for extended and, at least from the applicants' perspective, indeterminate periods. Often, these pending applications are associated with specific vendors that the SLD apparently deems to be “questionable.” At this stage, early in FY 2003, an estimated two thousand FY 2002 applications and several hundred FY 2001 applications remain

pending. Only recently, in a SLD letter dated March 26, 2003, have these applicants been advised that their applications are being extensively investigated.

When such “black hole” situations arise, applicants need a mechanism or process for resolving these problems or, at the very least, determining their situational status. We believe that the SLD should establish increasing levels of applicant access to status information and procedural relief for pending applications as the funding year progresses. In particular, E-Rate Central recommends the following:

- Prior to October 1, the current “In Review” status indicator is sufficient.
- From October 1 to December 31, the SLD should provide an additional level of status indicators such as:
 - Pending Initial Review
 - In Normal Review
 - In Selective Review
 - In Investigative Review
 - Pending Program Decision on Available Internal Connection Funding
- After January 1, the SLD should provide written, applicant-specific, status reports and provide provisions for:
 - Applicants to request application denial (to permit appeal to the FCC)
 - Applicants or vendors to request hearings on the merits of their applications

Although less directly related to waste, fraud, and abuse issues, “black hole” situations also arise with regard to SLD appeals and BEAR reimbursement payments. In particular:

1. Appeals: The SLD, unlike the FCC, has no requirement to act on appeals within a specified timeframe and has, only recently, established an internal response “target.” In some cases, appeals may linger for more than a year because of procedural delays caused, in some cases, by pending SLD requests for FCC guidance. On ultimately successful appeals, additional delays are introduced by separating the Administrator’s Decision on Appeal from the actual Funding Commitment Decision Letter.
2. BEAR Payments: Although the BEAR invoice process is becoming more detailed, the SLD has been generally successful in meeting its 20-day approval guideline. The combination of the Quarterly Disbursement Report and the online Data Request Tool provides full status data on disbursement authorizations. The problem for most applicants is tracking and receipt of actual reimbursement payments from the vendors.

The SLD should establish tiers of appellant access to status information and procedural relief based on the length of time the appeal has been pending. In particular:

- After the SLD’s target timeline for appeal resolution, the SLD should provide a status indicator such as:
 - Pending Initial Review
 - In Normal Review
 - In Special Review
 - Pending FCC Action
- After a period equal to twice the SLD’s target timeline for appeal resolution, the SLD should provide written, applicant-specific, status reports and provide provisions for:
 - Applicants to request application denial (to permit appeal to the FCC)
 - Applicants or vendors to request hearings on the merits of their applications

Although the delays in appeal processing is particularly problematic, similar delays can arise in the processing of other special requests involving SPIN changes, invoice deadline extensions, service substitutions, etc. It is recommended that similar procedures be applied to these requests.

To permit applicants to track and facilitate the receipt of actual reimbursement payments from the vendors, the SLD should:

- Establish an online database to permit applicants and vendors to track USAC payments by FRN, check amount, check issuance date, and check clearance date.
- Revise the BEAR (Form 472) to indicate the applicant name and address to which BEAR payments should be sent.
- Revise the Service Provider Annual Certification (Form 473 or “SPAC”) to require vendors to confirm or update their E-rate contact information.
- Extend the Good Samaritan process to provide applicant alternatives when vendors refuse to file SPACs.
- Create a specific Code 9 category for dealing with vendor non-payments.

Other Waste, Fraud and Abuse Issues

4. Encourage E-rate program compliance through proper incentives.

Crafting ever more detailed E-rate regulations in an attempt to enforce compliance can be an endless and, from the applicants’ and vendors’ perspectives, suffocating process. The bureaucratic forces underlying this effort are well discussed and illustrated in Philip Howard’s *The Death of Common Sense*.¹

¹ Howard, Philip K. *The Death of Common Sense*. New York: Warner Books, 1994.

An alternative — indeed, a more common sense approach — is to devise a set of incentives that would encourage proper participation in line with program goals. The following are four specific suggestions for simple rule or procedural changes to curb waste, fraud, and abuse by changing incentives.

4a. Reduce the maximum discount rate on Internal Connections to 70%.

In the Initial Comments of the Council of Chief State School Officers (“CCSSO”) to the FCC’s Notice of Proposed Rulemaking in CC Docket No. 02-6 in April 2002, and in subsequent policy briefs, the State E-Rate Coordinators’ Alliance (“SECA”) recommended that the maximum E-rate discount on Internal Connection (“Priority 2”) services be reduced from 90% to 70%.

Under the current discount rate structure, the demand for Internal Connection funding by the 90% and other high discount applicants has been extraordinary. Because of limited E-rate program funds, and an allocation method that channels funding only to the highest discount applicants, no Priority 2 funds have been awarded to applicants at or below 80% since FY 1999.

By reducing the maximum discount funding rate on Priority 2 services to 70%, SECA believes that:

- Scarce Priority 2 funding can be more fairly distributed across a broader range of needy applicants without unduly penalizing those applicants who have already received most of the Internal Connections funds in earlier funding years; and
- Increasing the minimum non-discounted portion of Internal Connection services from 10% to 30% will significantly reduce both applicant and service provider incentives that lead to instances of waste, fraud, and abuse.

Under the SECA recommendation, no changes are proposed to the discount rate structure for Telecommunications or Internet Access (“Priority 1”) services. Priority 1 services, with discounts up to 90%, have been fully funded in every program year. The recommended change would affect only Priority 2 funding.

One example of an E-rate discount rate matrix, revised in accordance with this recommendation (and used in this analysis), is shown below.

Revised Discount Rate Matrix

Income NSLP Eligibility	Priority 1 Discounts		Priority 2 Discounts*	
	Urban	Rural	Urban	Rural
Less than 1%	20%	25%	20%	25%
1% to 19%	40%	50%	40%	50%
20% to 34%	50%	60%	50%	60%
35% to 49%	60%	70%	60%	70%
50% to 74%	80%	80%	70%	70%

75% to 100%	90%	90%	70%	70%
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* Note: In the event that Priority 2 funds must be allocated at the 70% level, funding would be awarded in accordance with Priority 1 applicant levels (90%, 89%, etc.).

In order to estimate the funding impact of a maximum 70% discount rate on Internal Connection services for a broad range of applicants, SECA, with E-Rate Central’s assistance, undertook the analysis summarized below.

- FY 2000 was selected as the base year for estimating the nominal level of funding demand under the current discount matrix. This was the first funding year following FY 1999, the only year in the program’s history for which full Priority 2 funding was provided. As such, it was the year least likely to have been affected by applicant expectations of limited Internal Connection funding. It was also the year preceding the explosive new demand for Priority 2 funding at the highest discount levels that may have been fueled more by evolving service provider sales strategies than by real applicant need.

The initial pre-discount demand for Internal Connection funds in FY 2000 was \$4 billion, including 18% by 90% applicants and 36% from 80-89% applicants. Final Priority 2 funding totaling \$1.155 billion was awarded to applicants at the 86% discount level and above. Final demand at these levels ranged from 88-92% of the initial demand once ineligible items and/or duplicate applications were eliminated.

- An important assumption in the analysis is that the pre-discount demand for Internal Connection funding by the high discount applicants would decline if the maximum discount level was reduced to 70%, i.e., if the applicants were required to have “more skin in the game.” Two levels of revised demand were analyzed.

Revision 1 was based on the initial pre-discount demand levels of FY 2000 as discussed above. Final demand was estimated using the average adjustment factor (90%) that was experienced in funded requests that year.

Revision 2 assumed that Internal Connection demand for the lower income applicants might fall below FY 2000 levels, while demand for higher income applicants might rise with the prospects that Priority 2 funding would be available at lower discount rates. This “rebalancing” of demand was estimated using “pivot factors” based on FY 2000 Priority 1 demand centered on applicants in the 70-79% discount band. This raised Internal Connection demand slightly below the 70% level, and lowered it at increasing rates from 80% to 90%.

- The availability of funds for Internal Connections was based on the \$1.155 billion actually awarded in FY 2000. This figure does not account for additional program funding that may be available now that the SLD has adopted a policy of awarding more than \$2.25 billion per year (assuming that all awarded funding will not be used), or that unused funds may be rolled-over into annual funding beginning as early as FY 2004. Conversely, it does not account for the growing demand for Priority 1 funds that has been occurring in recent years. Overall, we view the \$1.155 billion figure as modestly conservative.

- The impact of the recommended discount rate revisions on individual applicants depends upon their individual discount rate(s). The impact on single-site applicants (or multi-site applicants with all sites at the same discount rate) is straight-forward. For a given level of pre-discount demand, funding for current 90% applicants would drop to 70%. Assuming that the revision permitted Internal Connection funding down to lower discount rates, many applicants currently at 80% or less would receive funding that has been completely unavailable since FY 1999.
- For multi-site applicants, with a range of discount rates, a more specific analysis is needed. The SECA study analyzed two large city school districts, Norfolk and Seattle, comprised of individual schools with discounts ranging from 20-90%. For a given level of pre-discount demand per school, the analysis compared the current funding situation, whereby only the 90% schools were funded for Internal Connection services, to projected funding under the two revised cases discussed above whereby funding would be available for lower discount schools, albeit at a maximum of 70%. Two scenarios of individual school demand were examined.

Scenario 1 assumed equal pre-discount demand (\$100,000) for each school.

Scenario 2 assumed a lower level of demand (\$50,000) for any existing 90% school based on the presumption that such schools may have already benefited from Internal Connection funding in recent years and would need less in the future.

The key conclusion of the E-Rate Central analysis is that a revision in the discount matrix to reduce the maximum Internal Connection discount rate to 70% would reduce demand in the higher discount bands to more normal levels and would thereby make Priority 2 funding available to a broader cross-section of E-rate applicants. By reducing monetary incentives for waste, fraud, and abuse, the recommended revision might also permit the SLD to streamline its review process, thus making critical funding available on a more timely basis.

The more quantitative conclusions in the analysis are summarized below.

- Revision 1: Had the revised discount matrix been in place for FY 2000, the 20% reduction in funding for applicants in the 86-90% range would have provided 70% Priority 2 discounts for 81-85% applicants and, on a pro-rated basis (approximately 50%) for 80% applicants.
- Revision 2: If, in addition, pre-discount demand for the higher discount applicants had fallen as estimated, Priority 2 discounts would have been provided for 51-85% applicants and, on a pro-rated basis (35-40%) for 50% applicants. Such a result demonstrates the real potential significance of the recommend revision.
- Large urban districts, with individual schools at various discount rates, might gain far more from the extension of Priority 2 funding to their lower district schools than they would lose by the 20% reduction of funding for their 90% schools. The

analysis for Norfolk and Seattle showed increases in total funding of 35-95% in the Revision 1 case (simply by adding pro-rated funding for 80% schools) and of 130-365% in the Revision 2 case (with funding down to the 50% schools).

4b. Permit Billed Entity Number changes.

The FCC’s Second Report and Order accompanying this NPRM “[c]larified that requests for duplicate services – services that deliver the same functionality to the same people during the same time period – will not be funded.”

The most frequent instances we see of duplicative requests occur when individual applicants can obtain services directly (often telecom services) or through a consortium. At the time Form 471s need to be filed, well before a funding year begins, applicants are not always sure which alternative will be used. Since application funding is currently linked to a Form 471’s Billed Entity Number (“BEN”), the only way that individual applicants can get full flexibility is to be covered under two applications. As a result, essentially duplicate requests are being made for discounted services, one directly and one as a part of a consortium.²

One way to limit this duplication is to permit BEN changes with associated FRN splits or roll-ups. The process could work in either direction.

- If an applicant filed its own application, was funded, and then decides to join a consortium (which didn't file on the individual applicant's behalf), the program should allow the individual applicant's FRN to be rolled into the consortium's FRN.
- Conversely, if the individual applicant was originally included in a consortium filing, was funded as such, and then decides to procure the service directly, the program should allow an FRN split to the individual applicant's BEN.

Conceptually, in either case, this would maintain funding for the underlying beneficiary. As such, it would remove the incentive for duplicate requests.³

4c. Raise the extrapolation threshold on income level surveys to 75%.

A survey is one of the alternative measures sanctioned by the FCC to determine a school’s level of need and its E-rate discount rate. Under the SLD guidelines, if an

² Hopefully, if both applications are funded, a Form 500 is filed quickly to cancel the unnecessary one. But often this doesn't happen immediately, if at all.

³ It should also be noted, given the proposed recommendation for funding caps by the Waste, Fraud, and Abuse task Force, that BEN changes would help solve the potential problem of applying caps to consortia and individual applications. Without such a mechanism, the SLD would presumably have to ask individual applicants, subject to a cap, to give up a portion of their capped amount to any consortia applying on their behalf. This would be either unnecessary, or a lot easier, if the applicant knew that it would remain the beneficiary of any resulting funding.

applicant sends income level surveys to the families of all the students in a school, and receives responses representing 50% or more of the students, the eligibility percentage reflected in those responses can be extrapolated to the entire school population.

We believe the 50% response threshold is too low. In some circumstances, it permits certain applicants to artificially inflate school discount rates to 90%. One reason this occurs is that surveys are often combined with annual NSLP enrollment mailings. This is an efficient way to do a survey, but it is likely to skew results. Any families qualifying for, and wishing their children to participate in, free- or reduced-priced lunches will definitely respond; those not interested in the program may not, even if encouraged in the survey letter.

Any school that qualifies for an 80% discount rate, based on NSLP participation of 50-74%, will get at least a 50% survey response rate (i.e., from the enrolling families). If less than 50% of the non-eligible families respond, the percentage of eligible respondents in the survey will be at least 75%. This is enough to justify a 90% discount rate under current survey guidelines. Schools that qualify for 60-70% discount rates, based only on participation data, can likely use surveys to justify at least 80%, if not 90%, discounts.

While such increases in discount rates for some schools may be fully justified, the mathematics of the 50% threshold suggest that discounts for other schools may be artificially inflated through the survey process. To correct this problem, we recommend that the extrapolation threshold be raised to 75%.

4d. Compare FY+1 requests to FY-1 utilization during PIA reviews.

Each year, a large number of funding requests go unutilized or substantially underutilized. Within New York State, for example, the percent of unused funds typically ranges between 15-20%. There are a number of reasons that funding may not be used.

- Funding requests must be made well before the start of the actual funding year. As a result, requested amounts are often based on imprecise estimates. Projected new services, in particular, may be delayed or may never actually be installed.
- As indicated above, duplicate requests may be filed to provide applicant flexibility for direct or consortia billing.
- Applicants (or vendors) may simply forget, or may miss deadlines, to file Form 486s and/or invoices. We have found a surprising number of applicants who apparently don't understand the BEAR process and think that their job is done as soon as they are awarded funding.

Although unused program funds can now be carried forward into subsequent funding years, the process is subject to delays unless applicants can be encouraged to file timely Form 500s to cancel or reduce excessive funding. Further, it is clear that

additional education is needed to help assure that proper invoices are filed to take advantage of all funds to which applicants are entitled.

We believe that the unused funding situation can be improved by including a quick review of an applicant's previous utilization before awarding any new discounts. By the time PIA is reviewing an application for the next funding year ("FY+1"), the recurring (and often non-recurring) services invoice deadline for the previous year ("FY-1") would have passed. A simple question, rather than any new regulation, should provide sufficient incentive or reminder to applicants of the need to file BEARs or a Form 500.

5. Reduce E-rate program complexities.

A long, long time ago it seems — in 1997 — we remember listening to a FCC representative describing the forthcoming E-rate program. It was to be so easy. A school or library would fill out one simple application and would thenceforth receive services at a discount. As implemented, of course, the program was never that simple. And it has grown more complex each year.

Except for the largest applicants, E-rate administration is not a full-time job. It is, however, a full-year job. Typically, applicants must keep track of three separate funding years at one time — invoicing for last year's funding, applying for next year's funding, and a combination of activities related to this year's funding — each with separate forms, review procedures, and deadlines. Small mistakes can lead to a full year's denial of funding.⁴

One outgrowth of this complexity is that many small schools and libraries do not bother to apply. Another is that many applicants, to the apparent dismay of the SLD and FCC, find it necessary to rely on vendors and consultants for E-rate assistance.

Program complexity is a major cause of waste, fraud, and abuse. A major effort is needed to simplify E-rate. As a start, we propose two specific approaches.

5a. Simplify eligibility allocations.

The current version of the SLD's Eligible Services List is 35 pages long. PIA representatives have access to even more detailed lists of eligible and ineligible services. Many products and services are only conditionally eligible, depending upon use or the characteristics of the service provider. Some services may be classified as eligible for Priority 1 funding in one situation, but eligible only for Priority 2 funding in another.

SLD personnel often argue about eligibility amongst themselves and official interpretations change throughout the year. Sometimes, eligibility can be affected by

⁴ In training sessions, we often note that the major difference between the E-rate and federal tax programs, which are of equal complexity, is that if you make a mistake on a tax form, the IRS does not say "Sorry, you failed Minimum Processing Standards, so you don't get to pay taxes this year."

simply changing the name of a product.⁵ Applicants, who are justifiably confused, are denied funding completely if they mistakenly include more than 30% ineligible items in a funding request.

Eligibility complexities waste both applicant and SLD resources. A new approach is needed.

We believe the problems are largely philosophic. Should the program seek preciseness in eligibility, at the expense of complexity, or simplicity, at the expense of precision? Consider one example.

One particularly difficult problem arises from the treatment of products that bundle what are currently considered eligible and ineligible components. Several FCC decisions⁶ have indicated that services provided only at single prices, that bundle supported and unsupported services, are entirely ineligible. However, the SLD employs two models — one involving “ancillary” ineligible components and one permitting cost allocations under virtually any circumstances — that permit at least partial eligibility of such mixed services. The advantage of the SLD’s approach is that it maximizes the range of products and services that are eligible for E-rate support.

On the other hand, allocations unduly complicate the program. In most cases, there is no one correct way to allocate costs, so allocation procedures become a matter of debate. Applicants, who lose an allocation argument with PIA, may find entire funding requests denied under the 30% Rule. Manufacturers, who can apply to the SLD for product pre-approval, seem more successful in justifying large eligibility allocations, but the SLD does not publicize decisions on these matters.

An alternative philosophy — and one we recommend — is to make all products and services either fully eligible or fully ineligible. One small step in this direction was made in the FCC’s Second Report and Order by redefining “educational purpose.” In particular, this change will eliminate the particularly troublesome aspect of cellular telephone eligibility that previously depended upon an allocation of cellular service charges based on the titles or job functions of the users.

We believe that in this stage in the program’s development, most applicants would gladly tradeoff lack of E-rate support for certain products and services for full E-rate support — and greater clarity — for others.⁷

5b. Establish quarterly deadlines.

⁵ “Caching servers” and “media servers” are fully ineligible, but “content engines” are 75-80% eligible.

⁶ See, for example, DA 01-1936 at Paragraph 9.

⁷ To clarify server eligibility for example, the program might either make servers ineligible, or permit one fully eligible server per site.

One relatively recent complication to the E-rate program has been the establishment of deadlines for Form 486s and invoices. The biggest problem with these deadlines is that they are based on 120-day periods, usually based on either of two dates, and that vary by applicant or, in many cases, by specific funding requests. As a result, different applicants have different deadlines, most based on non-standard mid-month dates. This makes it difficult to publicize any but the most common deadlines.⁸ Not surprisingly, many applicants miss one or more deadlines and lose all or partial funding.

As an alternative to 120-day, FRN-specific deadlines, we urge consideration of end of the quarter deadlines. As each quarter draws to a close, it would be much easier for applicants, the state coordinators, or the SLD to remind themselves or others that deadlines were approaching.

Respectfully submitted,

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⁸ For example, the October 28th deadline for most recurring services invoices and the October 29th deadline for many Form 486s — a one-day difference that is confusing in itself.