



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)

**Petition for Reconsideration or Clarification of the State E-rate Coordinators’ Alliance
Regarding
Report and Order Released on July 23, 2014; FCC Order 14-99**

The State E-rate Coordinators’ Alliance (SECA)¹ has reviewed the FCC Order 14-99, released July 23, 2014, and hereby submits this Petition for Reconsideration or Clarification with respect to three important and distinct issues. We urge the Commission to reconsider these issues and make adjustments to the Order as quickly as possible so to become effective for the FY 2015 E-rate Funding Year application process. The issues are as follows:

- The definition of urban should only include urbanized areas and not urban clusters to ensure that schools and libraries in sparsely populated rural areas are not improperly designated as urban; and

¹ SECA accomplishes its work through the resources of its 98 individual members who provide statewide E-rate coordination activities in 46 states and 2 U.S. territories. The four states not represented in SECA are Maryland, Minnesota, Montana and Nevada. The territories not included in SECA are Guam and Northern Marianna Islands. Invitations are routinely extended to these entities to join SECA. Representatives of SECA typically have daily interactions with E-rate applicants to provide assistance concerning all aspects of the program. SECA provides face-to face E-Rate training for applicants and service providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the Federal Communications Commission (FCC or Commission). SECA members typically provide more than 1300 hours of E-rate training workshops annually to E-rate applicants and service providers. In addition to the formal training hours, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails. We do not have any administrative staff and rely full time on our members’ volunteer activities.

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

- DID numbers should be considered as part of voice services and be phased out accordingly instead of being flash-cut ineligible beginning in FY 2015; and
- The manner in which applicants may submit and receive funding approval for Category 2 funding should be amended to ensure that the funding will be available in the year in which the applicants intend to install broadband equipment and services throughout their buildings.

I. The E-rate Urban Definition Should Include Only Urbanized Areas and Not Urban Clusters.

The July 23rd E-rate Reform Order adopted the 2010 U.S. Census urban definition as follows:

For the 2010 Census, the Census Bureau defined urban areas as the densely settled core of census tracts or blocks that met minimum population density requirements (50,000 people or more), along with adjacent territories of at least 2,5000 people that link to the densely settled core.²

The documents cited to in support of this description are: Dep’t of Commerce, Bureau of the Census, Urban Area Criteria for the 2010 Census, 76 Fed. Reg. 53030-1 (Aug. 24, 2011); Bureau of the Census, 2010 Census Urban Area FAQs, <http://www.census.gov/geo/reference/ua/uafaq.html> (last visited June 18, 2014).

On the other hand, the regulation language on page 131 of the Order states: “The Administrator shall designate a school or library as “urban” if the school or library is located in an **urbanized area** as determined by the most recent rural-urban classification by the Bureau of the Census.” (Emphasis added).

We agree with the language in the regulation that the definition of urban should be limited to urbanized areas and should exclude urban clusters. The use of urban clusters as part of the urban definition for E-rate purposes improperly includes sparsely populated towns in rural areas as urban. This occurs in those situations where according to the Census FAQs, an urban area will comprise “adjacent territory [densely settled core of census tracts and/or census blocks that meet minimum population density requirements] with **low population density** included to link outlying densely settled territory with the densely settled core.

The explicit definition of an urban cluster makes clear that such an area may contain as few as 2,500 persons: “A statistical geographic entity consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 persons but fewer than 50,000 persons.”³ We do not believe that towns with a population of 2500 people located in a rural area would meet any reasonable definition of urban.

² July 23 E-rate Reform Order at ¶ 223.

³ 76 Fed. Reg. 53030-1, 53043.

The Utah Education Network recently submitted a compelling petition in favor of reconsidering the urban definition, including photographic evidence of vast wide open sparsely populated spaces that would be classified as urban per the July 23rd E-rate Reform Order definition. The Utah Petition prompted other states to evaluate the impact of this designation on their applicants and the results were equally as startling and concerning.

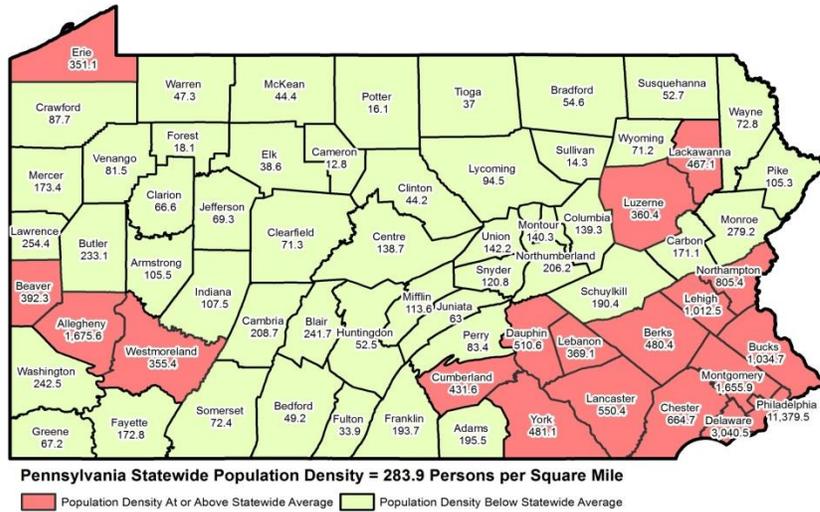
In South Dakota, the fourth most sparsely populated state, there are now 25 areas that are classified as urban clusters according to the 2010 U.S. Census data. Nineteen (19) of those areas would be newly classified as urban, while only six of them are currently designated as rural. Winner is one such district that would be reclassified as urban. The entire town of Winner has a population of 2,907 people. Winner School District has a total of 680 students as of the fall 2013. The elementary, middle and high school are housed in one building. The district covers a geographic area of 1,815 square miles which is larger than the State of Rhode Island. The student population density is less than 0.57 students per square mile.

Iowa is another state that will be negatively impacted by including urban clusters. Approximately 67 school districts would be newly designated as urban (this is not including the number of public libraries and non-public schools located in those same district boundaries that will also now be urban). An example of a newly "urban" area is the community of Bellevue, a town of 2543 people and a school district enrollment of 700. Bellevue is a small town nestled in the hills along the Mississippi River, surrounded by only hills and bluffs and 2-lane roads. The state also performed a quick analysis of the circuit costs going to these 67 districts and determined that their circuit costs are in no way consistent with the circuit costs of districts in urbanized areas. Rather, their circuit costs are consistent with their rural district neighbors. For example, the cost for a 1 GB circuit to Bellevue High School (identified as urban cluster) is \$824/month, whereas the cost for the same 1 GB circuit going to Dubuque Senior High School is \$226/month. By comparison, Midland High School in Wyoming, Iowa, is accurately classified as rural and is about 40 miles from Bellevue. The 1 GB circuit charge for Midland is \$701.33 per month. The discount for Bellevue High School will go down to 50% from 60% if the new urban definition is left unchanged and the District's annual non-discounted share will increase from \$3,955.20 to \$4944.00 or by 25%.

The following is a map of Pennsylvania, using 2010 census data, showing rural counties in PA using population density data.

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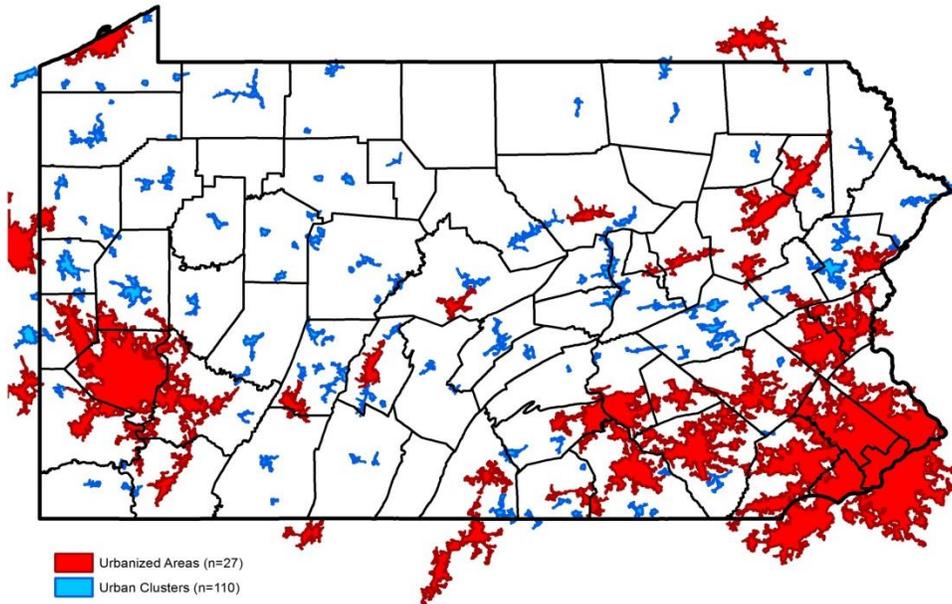
Rural/Urban Counties of Pennsylvania Using 2010 Census Data



The yellow areas in this map accurately depict the rural, sparsely populated portions of the state.

Now consider the following map that separately identifies Pennsylvania’s urbanized areas and urban clusters.

Urban Clusters and Urbanized Areas in Pennsylvania Using 2010 Census Data

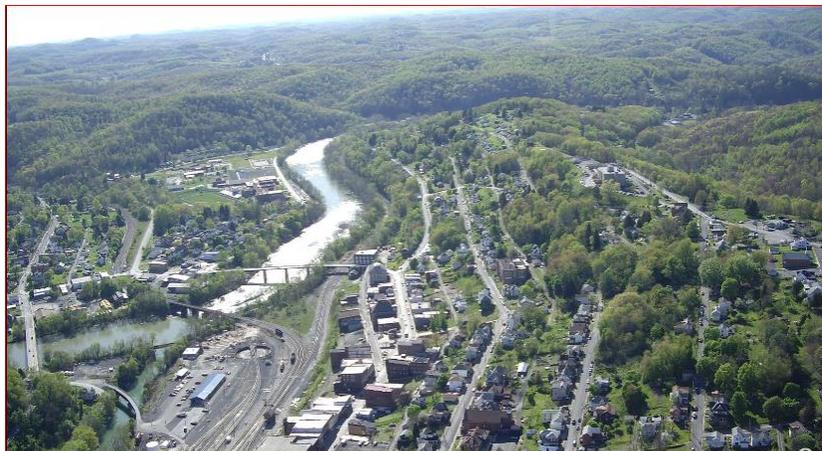


The urbanized areas are denoted in red, while the urban clusters are denoted in blue. The urban clusters are mostly located in rural areas of the state; a comparison of the maps shows that most of the urban clusters are situated in rural counties (yellow) in the first map. By including these small towns in the

definition of urban, the new methodology will penalize the very schools and libraries that the Commission very much wants to see faster broadband adoption because their costs will jump 10% overnight.

For example, after significant deliberation last year, the DuBois Area School District, located in Clearfield County, signed a multi-year contract to install and lease a gigabit fiber network, bringing a 1 GB connection to each of their 10 schools. The cost is \$11,000 per month. Their E-rate discount was 73% last year, requiring the District to pay \$2970/month for its non-discounted share or \$35,640 per year. Using the new simple average discount calculations and new definition of urban, the District's broadband discount rate will drop to 60% in FY 2015, requiring them to pay from their local budget an additional \$17,160/year to afford the network – which is 48% increase in their non-discounted share. The District does not believe it was the intention of the Commission to penalize rural districts where broadband costs are most expensive, yet this has been the result.

Another example is Grafton, West Virginia, a small remote, rural town that will now be classified as urban because its population is about 5,000 people. As you can see from this photo, Grafton is anything but urban.



We understand that the Commission was searching for an easy-to-identify definition of urban and rural. However, we do not believe the inclusion of urban clusters in the definition of urban is consistent with the Commission's broadband adoption and affordability goals, particularly for schools and libraries in rural America. We respectfully ask the Commission to clarify that the regulation language on page 131 of the Order is accurate as it only identifies urbanized areas as being included in the E-rate definition of urban.

II. Direct Inward Dial Numbers Should Be Included As Part of Eligible Voice Services That Are Subject To Phase-Out, Rather Than Be Deemed Ineligible As A Telephone Service Component in FY 2015.

In the July 23 Order, the FCC deemed Direct Inward Dial (DID) numbers to be a non-essential voice phone service and categorized them with other telephone service components such as text messaging, custom

calling features, inside wiring maintenance plans and call blocking. These components are all considered fully ineligible beginning FY 2015. While we believe that the elimination of these voice components poses a great administrative burden on applicants, service providers, and the fund administrator⁴, the flash-cut ineligibility of DID numbers specifically should be reconsidered and instead be classified as voice and phased-out accordingly.

Direct Inward Dial (DID) numbers are an essential feature of voice telephone service. For Centrex, PBX and VOIP service, DID numbers allow calls to be routed to a specific number without first going through a receptionist, automated attendant or Interactive Voice Response (IVR) system. Regardless of the technology used to deliver DID calls, Centrex, PI or SIP trunking, the service is integral to the communication needs of the schools.

DID numbers and DID blocks that provide a block of telephone numbers for calling into a company's private branch exchange (PBX) system. Using DID, a telecommunications company can offer its customers individual phone numbers for each person or workstation within the company without requiring a physical line into the PBX for each possible connection. For example, a company might rent 100 phone numbers from the phone company that could be called over eight physical telephone lines (these are called "trunk lines"). This would allow up to eight ongoing calls at a time; additional inbound callers would receive a busy signal until one of the calls completed or the caller could leave a voice mail message. The PBX automatically switches a call for a given phone number to the appropriate workstation in the company. A PBX switchboard operator is not involved.

DID numbers are separate and distinct from these other telephone service components because voice phone service calls are not able to be completed without them. DID lines are physical facilities just like Central Office (CO) Trunk Lines. They terminate into a DID Trunk Card. Voice conversations are carried over these facilities. In a PBX environment the CO Trunk Cards look almost identical to the DID Trunk Cards. Importantly, DID numbers were not specifically identified by the FCC in the July 19, 2013 NPRM in Paragraph 95 as one of the potential services or items that would be subject to phase-down as an outdated service or one that did not have an educational purpose. We believe that because DID numbers are an essential service, they should be included in the category of voice phone services that are being phased out rather than deemed immediately ineligible beginning in FY 2015.

⁴ SECA understands the rationale for making minor Telephone Components ineligible, but questions whether any immediate savings in E-rate funding justify the application complexities created for both applicants and PIA. As a practical matter, applicants and/or PIA reviewers will be required to find, and break out, a variety of relatively small charges that are often buried deep within what can be large and complex telephone bills. This will be very time consuming and clearly violates the FCC simplification goal to make the E-rate application process faster and more efficient. The amount of administrative time that the PIA reviewers may need to expend to verify the exclusion of these charges will greatly outweigh any potential savings to the fund. SECA recommends that such components be treated as a part of normal voice services, and whose eligibility are phased out on the same schedule as voice phone services.

III. Applicants Should Be Permitted To Receive Approval For Category 2 Funding In The Year In They Need The Money, Even If The Approval Is Conditional Upon Availability Of Funding In Future Years.

Over the last two months, SECA members have conducted dozens of seminars explaining the changes emanating from the July 23 Order. The overwhelming sentiment being reported has been that while applicants are initially happy to learn they will be eligible for Category 2 funding, they are quickly deflated to learn that the new rules provide for no way to receive funding in the year that they will actually need to install broadband equipment and upgrade their infrastructure. These concerns are particularly worrisome for those applicants in lower discount bands who traditionally have been unable to access Category 2 funding but have used discounts from Category 1 funding to help defray their equipment purchase costs. These and all other applicants will experience a reduction in Category 1 funding immediately in FY 2015 due to the eligibility elimination of certain services and phase-out of others. Yet these applicants have no way of knowing whether there will be sufficient money available to meet their Category 2 needs in any given year. Of course, the same concern applies to higher discount applicants but these applicants have a much better chance of receiving funding approval for Category 2 in the year in which they submit their applications, just as they have in past years.

Business managers express frustration that, from a budgeting perspective, they have no way of knowing which year to budget the non-discounted funds as well as funds for all of the other end-user equipment purchases that will be needed. The technology and curriculum directors are reporting that the C2 plan provides them no way of developing or implementing a meaningful technology plan and makes it extremely difficult to develop 3-year comprehensive curriculum plans. The following is the text of an e-mail from a district network administrator and is one of hundreds of e-mails that state E-rate coordinators have received on this issue:

"Because we are a 60% school I'm not sure when I should plan to do a wireless upgrade. If I plan to do it in say year 3 of this new change and the funding doesn't make it down to the 60% group in year 3... what does that mean? I totally miss out? I guess I'm just not sure how to plan for it."

School officials are frustrated.

According to the Funds for Learning's funding analysis⁵ released on September 3, more than \$3 billion of funding is needed to fully fund all requests at the 85% and 80% discount bands, and that only 85% and half of 80% funding requests will be funded in the first two years. This means that for all practical purposes, applicants with a discount band of lower than 85% -- the same group that historically have been unable to access Category 2 funding -- will need to wait at least until FY 2017, 2018, and perhaps 2019 to have a viable chance to receive funding approval. Yet, they will have to go through the exhaustive application

⁵ <https://www.fundsforlearning.com/blog/2014/09/balancing-the-e-rate-budget>

process annually with absolutely no way of knowing if that is their year to be funded. As the evidence in this proceeding has already established, many schools and libraries need to install or augment their existing broadband capabilities inside their buildings **now** – not several years from now. The arbitrariness and unknown aspects of this new model cannot be minimized. In other words, the C2 funding uncertainty that has plagued the program since its inception still remains after the changes made in the July Order.

The concern about the lack of predictability of available funding could be significantly ameliorated by revising the rules to require the administrator to process all applications for Category 2 funding in the year in which the application is submitted. If the application is for funding at a discount and NSLP level below which there is not available funding in a particular year, the administrator would notify the applicant that the application complies with program rules and is eligible to receive a funding commitment in a future year when funding may be available. These applications would then be included in the calculation of future yearly funding demand and would receive a Conditional Funding Commitment Decision Letter (CFCDL) in the year in which funding was available for the discount and NSLP levels associated with the funding request.

This approach would greatly improve program administrative efficiency by not requiring applicants to guess which year funding will be available for their application and to require them to keep filing year after year. It would also allow the FCC and the administrator to gain a much clearer understanding of true funding demand for Category 2. Upon receipt of the CFCDL, applicants could then use the information received from USAC to implement their internal broadband projects – on their schedule. If funding was not available in the year in which the project needed to proceed, the applicant would still have to find another temporary funding source for the project, but would at least be reasonably assured that they would be reimbursed with E-rate funding in a subsequent year via the BEAR reimbursement process. Such a process may also help applicants secure a temporary funding source subject to repayment with E-rate funding at a later time. Of course, if the applicant failed to comply with program rules and the application was denied on its merits, the applicant would have to re-apply in a later year – like the current process. At the very least, applicants would not be penalized due to the lack of available E-rate funding in the year in which they proceeded with their necessary broadband equipment installations.

Anticipating that the FCC might be concerned with the nomenclature of a conditional funding approval and how this would impact the ADA requirements, SECA recommends that for meritorious applications with discount and NSLP levels below the particular year's funding threshold, the notification letter that is sent from the SLD would not be a funding commitment per se but rather a notice of intent to issue a funding commitment subject to available funds. We think this approach addresses the Commission's current rule that prohibits future funding commitments. Applicants would also need to clearly understand that a "notice of intent" to fund their application is not an absolute guarantee to do so rather that the intent to fund is conditional upon all other criteria being met.

We understand that this proposal represents a welcome and necessary “sea change” to the manner in which Category 2 funding is allocated and will require various rule changes, but it is essential in order for the FCC’s vision of E-rate 2.0 to be realized.

IV. Conclusion

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

Respectfully Submitted by:

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