



Pennsylvania Department of Education
333 Market Street
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**Before the
Federal Communications Commission
Washington, DC**

In the Matter of

Comprehensive Review of Universal Service Fund Management, Administration and Oversight)	WC Docket No. 05-195
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45

Reply Comments of the Pennsylvania Department of Education

On behalf of the schools and libraries in the Commonwealth of Pennsylvania, we would like to thank the Commission for this opportunity to provide comments on the proposed comprehensive changes to the federal E-rate program.

Pennsylvania has 1.814 million public school students in 659 school districts, vocational technical schools and charter schools; 327,000 nonpublic private school students in 2650 nonpublic schools; and 613 public libraries. While we have several large urban districts like Philadelphia and Pittsburgh, most of our applicants are small to medium sized, rural schools and libraries, with requests in the \$20,000 - \$40,000 range.

In these comments, we address the following issues:

- A. Formula-Driven Funding Mechanism
- B. Management and Administration of the E-rate Program
- C. Availability of Program Rules, Procedures and Requirements
- D. Reform of the Competitive Bidding and Application Process
- E. Priority 2 Funding Reform
- F. Dual Contract Signatures

A. Formula-Driven Funding Mechanism

In the NPRM, the Commission requested comments on numerous issues, the largest of which was whether the funding mechanism should be formula driven directly to eligible entities, and if not, what reforms to the current process should be implemented. The Pennsylvania Department of Education has considered whether the formula-driven funding method would be a viable alternative to the current

discount-driven funding method in order to alleviate the frustrations felt by schools and libraries over the complexities of the current program structure. Despite these complexities, schools have continued to apply because the discounts are vital to the continuation of broadband access and therefore the delivery of high-quality education. E-rate was developed to assist schools and libraries with infrastructure build-out, particularly to regions where costs of receiving broadband access otherwise would be prohibitive, and for the sustainability of those broadband networks. E-rate has proven to be a reliable and predictable funding source, with no threat of termination of funding. Administering entities have had the benefit of knowing that the funds for that initiative will be sustained through the next federal budget cycle.

By transforming the program into a formula grant, we believe that the fund would become vulnerable to federal budget-battles, similar to other technology funding initiatives, and would stand a greater likelihood that funds would be used for purposes other than what it was intended. For this reason, we do not advocate a formula-driven approach to E-rate funding for Priority 1 services.

However, we believe that the current E-rate program is in need of vast reform and we applaud the efforts undertaken by the American Library Association and the State E-rate Coordinators' Alliance and others to develop comprehensive proposals that would reform the program. We discuss these proposals in more detail below.

B. Management and Administration of the E-rate Program

We agree with SECA and other commenters that the current relationship between USAC and the Commission is not conducive to administering a program of this size and complexity.

There are several worthy suggestions to overcoming the current impasse. The Commission could delegate more authority to USAC to make decisions; the Commission could hire more staff to provide policy guidance and assistance to USAC in a timely manner; or the Commission could delegate more authority to the USAC Board to provide guidance and make decisions for USAC. We urge the Commission to act quickly to resolve the apparent impasse that exists now between the Commission and USAC.

We agree with two positions taken by other entities in their NPRM comments. First, SECA, the American Association of School Administrators, the Association of Education Service Agencies and others advocated for a formal Advisory Committee to be created to provide advice on both policy and operational issues to the FCC and USAC. This Advisory Committee would be comprised of various stakeholders that have hands-on and day-to-day operational knowledge of both the E-rate program and of schools and vendors. AASA and AESA also suggested that USAC should hire more individuals with school and library experience in order to provide a voice of reality when decisions are being made within USAC. Both of these suggestions are sound, could happen quickly, and would be extremely helpful as the program transitions to its next phase.

C. Availability of Program Rules, Procedures and Requirements

In recent years, the program's rules, procedures, and applicant guidance has greatly expanded, making it difficult for schools and libraries to locate all of the information related to a particular topic of the

program. There are FAQs, SLD training presentations, website notices, application instructions, eligible services list and special eligibility rules, reference area documents, FCC rules, appeal decisions, and the unpublished PIA procedures. Very few – if any – applicants believe they know all of the rules of the program. There is no single repository for rules, policy and procedures related to the E-rate program and we agree with SECA, the E-rate Service Provider Forum and others that applicants and service providers should be able to obtain all requirements associated with the program in a single, easily accessible location.

D. Reform of the Competitive Bidding and Priority 1 Application Process

The Pennsylvania Department of Education supports the comprehensive reform to the current application process. The existing program has become so overly burdensome and complex that applicants have little confidence from year to year whether they will receive their E-rate discounts. We do not believe the program was intended to work in this manner. The goal should be to fund all applicants painlessly and expeditiously unless they are trying to commit fraud against the fund. The administrator should be required to work with each and every applicant until their application is approved and permit applicants to cure any errors or mistakes made on their applications. This goal should be the cornerstone of any E-rate reform proposal that is adopted by the Commission.

Competitive Bidding Reform

We agree with SECA, the American Association of School Administrators, the American Library Association, the Council of Chief State School Officers, and numerous other commenters that the Form 470 should be eliminated and schools and libraries should just be required to comply with state and local competitive bidding requirements. Each year, the top reason for denials is that applicants have violated one of the many Form 470 deadlines or procedures. These are not applicants that are trying to defraud the program, in fact, in most of these cases, these are applicants that do not receive a single bid for any service they have listed on the Form 470. Yet they are denied for listing a wrong 470 number, for signing a contract before the allowable contract date, for forgetting to list a particular service on the form, for listing a service under the wrong category, for checking a wrong box, etc. The competitive bidding rules and procedures have grown each year for both priority 1 and priority 2 services, yet the abuses of the program that these new procedures are designed to stop, are all at the priority 2 level. We agree with the other commenters that the Form 470 must be eliminated altogether.

In order to ensure that prices are competitive, we agree with SECA that pre-discount costs should be monitored for price reasonableness during the PIA review process. Only in situations where the Universal Service Administrator has cause for concern would the applicant have to demonstrate proof of compliance with state procurement requirements. If no such requirements govern the procurement at issue, or the applicant cannot demonstrate that the price of the service is reasonable, the Administrator would reduce the funding request (but not deny it in its entirety) to an amount consistent with the prices paid by other similarly located customers.

The other intended benefit of eliminating the Form 470 requirement is that its associated deadlines, category selections, multi-year contract and contract extension requirements also would be eliminated. Annually these requirements are the basis for a multitude of administrative denials for deserving, eligible, applicants that in no way are trying to commit fraud against the program. By removing the cause or basis for these denials, applicants would receive the discounts they deserve, but equally as important – particularly to the Commission and USAC – is that the appeals associated with these denials would be eliminated. Further, confusion and constraints arising from contract signing and ending dates listed on a Block 5 also would be removed because such dates would not be collected on the Form 471 application.

Streamlining of Forms 471, 486 and 472

The American Library Association and the State E-rate Coordinator's Alliance presented in their respective comments the outline of a streamlined application and review process that virtually eliminates all of the E-rate application forms. The Pennsylvania Department of Education supports a streamlined application and review process, together with guaranteed funding commitments by June 1. These proposals spell out why most forms can be eliminated or combined and we encourage the Commission to use both proposals as the basis for their reform planning efforts. Also, both proposals were developed by individuals with thorough knowledge of the E-rate program and its current challenges, an understanding of the Telecommunications Act of 96, as well as vast knowledge of school and library budgets, procurements, and technology needs.

3-year Application Cycle

The Pennsylvania Department of Education reviewed the comments by several entities that supported the 3-year application cycle approach and we understand the apparent advantages that the 3-year cycle possesses. However, Pennsylvania sat down with 20+ other states and contemplated how the 3-year cycle would work and in the end, realized it could not. Unfortunately, schools and libraries would not be able to apply for discounts once every three years because for this to happen, it assumes that all contracts begin and end nicely every three years, which they do not. Some services are procured on a MTM basis, some on an annual basis and some on a 5, 7 or 10 year basis and others are procured as more bandwidth is required. We realized that in the end, most schools and libraries would have to submit annual E-rate application forms anyway because their contracts expire in the middle of the 3-year application cycle or new services are needed in the middle of the 3-year application cycle. So while we support the notion of reducing the number and frequency of applications and streamlining the review process, we believe this would best be accomplished by an annual single-application with streamlined reviews for priority 1 services as described by ALA and SECA.

Online E-rate Portal

SECA commented that the program could be administered more efficiently if the Administrator would automate all of their processes into an online portal. We support this proposal. If a program is going to be regarded well by the applicant and service provider community and administered efficiently by USAC, it must be transformed into a truly web-based program where all information, letters, updates, processes, changes, requests and forms are web-based in a customer-friendly format. This single alteration of the program – which would require no rule changes by the Commission – would save hundreds of millions of dollars through the elimination of paper application processing costs, mailing costs, personnel costs, not to mention the time savings that would be afforded to E-rate applicants and providers and a sense of restored faith in the program.

E. Priority 2 Funding Reform

By funding the highest discount applicants for eight straight years, the program has helped to greatly narrow the digital divide. But it also has had the unintended effect of creating a new class of technology-needy schools because internal connections funding has only reached below 81% one time since 1999. In our recent experience it is often the schools with discounts below 90% that lack the adequate infrastructure to support high-speed bandwidth to the classroom. Thanks to eight years of E-rate support and other significant state and federal funding, the 90% schools are wired; it is the 50 - 80% discount applicants that are now most in need of E-rate priority 2 funding.

Several commenters suggested ways to reform the priority 2 funding mechanism and we support the intended consequences of all of these reform proposals, which is to drive funding out to more applicants, with some level of predictability. We are particularly supportive of the revolving year proposal where an entity is guaranteed internal connections funding, up to a per-pupil cap, once every 3 or 4 years. This would provide the needed funding to all of the nation's schools for infrastructure upgrades, would align nicely with the 3-year technology plan requirement, and would provide the very much needed predictability of funding. Although it appears to be the same as the 2/5 rule that currently is in place, the revolving funding proposal provides the predictability of funding, and guarantee of funding that currently is not embedded in the 2/5 rule.

Our support for the revolving funding proposal, however, is provided only if the revolving proposal is also implemented with an adjustment to the discount matrix where the maximum discount permitted is 70%. By lowering the maximum discount for internal connections, the results would be twofold – the incentive to purchase unneeded product would be greatly reduced, and discounts would be available to other poor, non-wired schools. The Commission has expressed interest in this proposal for several years and has collected comments from interested parties in which the overwhelming majority of commenters support this immediate change to the discount matrix. We urge the Commission to adjust the matrix so the maximum discount permitted for internal connections is 70% and to couple this change with a reform to the funding distribution for priority 2 funding whereby applicants are guaranteed to receive funding once every 3 or 4 years, up to a per-pupil cap.

F. Dual Contract Signatures

USAC has recently announced a requirement that all contracts for E-rate eligible services must be signed and dated by both parties prior to the submission of the Form 471. Although the Commission did not specifically request comments on the issue of dual contract signatures, we believe that recent events surrounding this issue warrant our comments to the Comprehensive Reform NPRM in an effort to have this problem established in the public record and with the request that the Commission will take immediate action.

In the September 2005 USAC-SLD Training Presentation entitled, "Program Compliance," the following guidance is set forth (on slide 13):

Contracts

- Must sign a contract after your 28 days has elapsed but before you file your 471.
- **Must contain two signatures and two dates (applicant and provider).**
- **If contract was signed before 10/13/04, and only had applicant signature, can get signature of service provider now to come into compliance.**
- Include description of goods and services to be delivered.
- Be prepared to explain documents that don't look like a traditional contract.

Prior to the Fifth Report and Order, the FCC did not explicitly prescribe that a contract requires the signature of both the applicant *and* the service provider in order for it to be valid for E-rate purposes. In fact, the FCC's rules in effect since the inception of the program required that only the *applicant's* signature and not the service provider's signature. Section 54.504(b)(4) requires that an applicant wait at least four weeks from the posting of a FCC Form 470 "before making commitments with the selected providers of services." Section 54.504(c) states that an applicant, "upon signing a contract for eligible services" may submit a FCC Form 471. There is no requirement articulated in the FCC regulations that a contract must be signed by a service provider in addition to an applicant in order to be accepted as a valid E-rate contract.

The USAC-SLD 2003 Training Presentation on Service Provider Issues confirms that, as of that point in time, USAC did not impose a dual signature requirement. In the 2003 TTT presentation on program compliance, the SLD originally stated on slide 13 that "Contracts must be signed and dated by both parties." But, a printed correction was distributed and attendees were instructed to cross out that bullet, and insert in its place: "The FCC requires that the applicant sign a contract prior to filing the Form 471."

In August 2004, in the Fifth Report and Order in CC Docket No. 02-6, the FCC mentioned *for the first time* that contracts require the signature of both parties. This new requirement was imposed somewhat inadvertently as part of the five-year document requirements. Specifically, the Order states:

Contracts. Both beneficiaries and service providers must retain executed contracts, signed and dated by both parties. All amendments and addendums to the contracts must be retained, as well as other agreements relating to E-rate between the beneficiary and service provider, such as up-front payment arrangements.

This requirement was not issued directly in response to a question or issue concerning the required components of a valid contract, nor was it addressing what is considered a valid contract. It simply was language embedded in a list of documents that must be retained for five years. Indeed, up to this point, the SLD deferred to the requirements of state law to define the elements of a contract.

When this language was first discovered, the SLD stated that it was intentional and this was, and always has been the rule. We believe the Commission did not intend to change the contract signature rule and it was an inadvertent insertion of the words “both parties” into the Order. After the SLD made the determination that the language was included in the Order intentionally, the Commission issued a statement that permitted contracts executed prior to October 14, 2004 (the effective date of the Fifth Order) to be “cured” by obtaining the signature of the service provider. We believe that this act is itself an implicit acknowledgment that the dual signature requirement was not clearly prescribed prior to the Fifth Report and Order. Had the requirement been clear before this time, there would be no reason to permit parties to “cure” contracts lacking a signature.

By making this requirement be retroactive, it poses numerous operational and legal questions.

1. Why is the dual signature requirement being applied retroactively? Some E-rate contracts containing one signature may already have been terminated or concluded before October 14, 2004. Yet, these contracts may be included within the five-year document retention period and/or the five-year administrative limitation period for E-rate audits. Why is an applicant required to reach back in time and obtain the service provider’s signature for these contracts in order to avoid the possibility of invoking an adverse audit finding based on a so-called violation of the dual signature requirement, and to avoid the possibility of a COMAD?

2. Contracts signed prior to October 14, 2004 in effect at the present time: During the Question and Answer Session of the September 30, 2005 training, the SLD stated that in order to cure a contract lacking the service provider’s signature, the signature shall be obtained and dated as of the current date – not the date that the contract was originally signed.

We have spoken with several service providers that are unwilling to retroactively sign a contract, regardless of what date is used on that contract. We also have spoke with several school district solicitors that believe it is a violation of state contract law to have a legally binding contract signed retroactively by one party. And of course, the obvious questions exist about what happens when a service provider from a previous contract is no longer in business, and how an applicant will avoid a PIA denial because a date exists on the contract that is after the date that the Form 471 was filed.

3. What recourse does an applicant have if the service provider is unwilling to sign and date the contract as prescribed by USAC-SLD? Does the service provider’s unwillingness mean that applicants are at risk for funding denials or COMADs?

By the inadvertent insertion of the words “by both parties” into the Fifth Report and Order, a set of interpretations and procedures were developed and relayed to the applicant community with little thought as to both the operational and legal affects of this interpretation. We urge the Commission to quickly issue an Errata or Reconsideration to the Fifth Report and Order which deletes these words.

Should the Commission not choose to issue an Errata or a Reconsideration of this new rule, we urge the Commission to abide by the precedent that grandfathers certain agreements as a date certain, when rules change. For example, as of the commencement of the program, contracts signed on or before July 10, 1997 were exempt from the competitive bid requirement of posting a FCC Form 470. In addition, the Commission would then prescribe that the dual signature requirement applies only prospectively. The effective date of this requirement shall be some certain date in the future thereby giving all applicants sufficient advance notice of the dual signature requirement in order to incorporate this requirement into their prospective procurements.

Respectfully submitted,

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