

October 19, 2017

*Ex Parte* Notice

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RE: *Ex Parte* Notice - WC Docket No. 13-184, Modernizing the E-Rate Program for Schools and Libraries

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the undersigned provides notice that on October 12, 2017, members of the E-Rate Management Professionals Association (E-mpa<sup>®</sup>) listed below met with representatives of the Wireline Competition Bureau including Elizabeth Drogula, Aaron Garza, James Bachtell, and Bryan Boyle.

During the meeting, the following topics were discussed:

1. Procedures for managing the transition of service from one service provider to another
  - a. E-mpa<sup>®</sup> requests a way to allow for funding of both the old and new providers, accommodating for an unknown cutover date and allowing for post-commitment adjustments to the funding requests *after* the cutover has occurred.
  - b. Currently, USAC's PIA reviewers require applicants to provide an exact cutover date from an existing service to the new service. Then, the PIA reviewer will adjust service start and end dates for both FRNs and finally recommend them for funding. In most cases, at the time of the PIA review the applicant and service provider do not know when the actual cutover will occur. This is due to the new service provider being unwilling to move forward with construction and installation without an FCDL decision or Form 486 Notification Letter. The current PIA procedure requiring applicants to guess at cutover dates results in lost funding, denials, reduced funding requiring correction through an appeal, or applicants choosing to remain with their existing provider even if the cost is considerably higher.
2. Fiber cost-allocations for excess fiber
  - a. E-mpa<sup>®</sup> expressed concern that new guidance was provided in the USAC training slides presented October 10, 2017 regarding fiber and special construction with examples number three (self-provisioned fiber for a school shared by ineligible entities), and number four (self-provisioned fiber for a consortium that includes

ineligible entities). This new guidance was provided verbally and implies a policy change that was implemented after the close of the Filing Window, but is being used to deny applications for Special Construction.

- b. Additionally, E-mpa<sup>®</sup> is troubled by the number of denials of special construction funding requests, COMADs of previously funded and installed projects, and lengthy PIA review for FRNs including special construction for leased lit, leased dark fiber or self-provisioned networks. E-mpa<sup>®</sup> is concerned that the uncertainty and hardship in seeking funding is discouraging applicants from seeking funding for services made eligible in the Second Modernization Order and which prove to have significant effect in reducing bandwidth costs to both the E-rate program and the applicant.

At the conclusion of the discussion of the topic, it was E-mpa<sup>®</sup>'s understanding that the following is WCB's guidance in regard to excess fiber strands:

- c. Leased dark or lit fiber – the service provider may use excess fiber strands for other customers if the additional cost for the excess fiber is properly cost-allocated. Examples of cost-allocation would be the incremental cost of the additional fibers themselves and any other additional costs incurred for the excess fiber such as additional splicing costs or larger termination boards.
- d. Self-provisioned fiber projects – the applicant must own all of the excess fiber. The excess fiber that is not lit by the end of the funding year must be cost-allocated. The excess fiber may not be used by third parties and must always be for the future use of the applicant.
- e. As per the First Modernization Order:

*"...consortia may include health care providers eligible under the Rural Health Care program and public sector (governmental) entities, including but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities. This change does not alter requirements for applicants and service providers."*<sup>1</sup>

Guidance provided by WCB during our meeting in association with USAC's training slides showing examples of cost-allocation of fiber, is that the difference between Example 3 in slide 28 and Example 4 in slide 29 is that Example 4 is an E-rate consortium and the application was filed as a consortium, including municipal entities allowed by the above verbiage in the First Modernization Order. In Example 3, the application was a self-provisioned fiber project filed as a district, and not a consortium and was denied because the fiber was not going to be exclusively owned and used by the applicant, but rather would be owned and used jointly by the district, a state entity, and a public sector non-profit entity.

### 3. Cardinal change

- a. E-mpa<sup>®</sup> expressed concern that the definition of a cardinal change in the Fourth Order on Reconsideration is in relation to contract changes and does not directly address RFP and Form 470 changes. Therefore, with limited guidance, USAC is

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<sup>1</sup> FCC-14-99A1, 5. Other Rules Changes; Paragraph 182

considering any additional information provided to potential bidders as a cardinal change. For example, answering “Yes, see the RFP for the answer to this question,” may be considered a cardinal change by USAC. This issue is causing denials of funding and subsequent appeals, adding to the backlog at USAC. E-mpa<sup>®</sup> requests, on behalf of all program stakeholders, clarification from the FCC on this issue, including specific guidance and examples as to what constitutes a cardinal change as it relates to the E-rate competitive bidding process.

Additionally, we are seeking clarification regarding when the deadline for bids must be extended because of a cardinal change, and whether the extension must be a full 28 days.

#### 4. Transparency

- a. E-mpa<sup>®</sup> requests greater transparency from the FCC and USAC regarding known-issues in EPC. The stakeholder community will perform more efficiently and effectively with additional information including, but not limited to, identified issues, the scope of the issue, the processes planned and deployed, and the estimated timeframe to completion. An example of this is the delay of Form 486 Notification Letters for 2017 due to a bug in EPC. Applicants must file the Form 486 when services start, to notify USAC that they may begin paying invoices. Some service providers will not move forward in implementing a project until the Form 486 Notification Letter is issued by USAC. The delay in processing of Forms 486 is causing delays in project implementations and invoicing of discounts for services completed. If service providers and applicants are notified in advance by USAC of a problem and when it is anticipated to be fixed, there is less confusion. E-mpa<sup>®</sup> encourages the FCC to make public USAC’s plan to fix EPC, as directed in Chairman Pai’s letter dated April 18, 2017.

#### 5. Category 2 Budgets

E-mpa<sup>®</sup> appreciates the opportunity to submit comments in response to the FCC’s Public Notice DA 17-921 regarding Category 2 Budgets. The E-mpa<sup>®</sup> organization represents a considerable number of E-rate applicant schools and libraries nationwide. Utilizing our resources, we will provide examples from a cross section of applicants, both large and small, rural and urban, public, private and charter, and we will provide evidence to the FCC that the existing Category 2 Budget is insufficient in all cases.

The E-Rate Management Professionals Association is an advocate for the critical role served by E-Rate management professionals and consultants. The organization strives to strengthen and support the E-Rate program by acting as a self-certifying body of E-Rate management professionals and consultants. E-mpa<sup>®</sup>’s mission is to promote excellence and ethics in E-rate professional management and consulting through certification, education, and professional resources.

### Members in attendance:

<b>Allen &amp; Allen Consulting, LLC</b>	Kerri Dillon	<b>Infinity Communications &amp; Consulting, Inc.</b>
Karen Allen	Mel Van Patten	Brittany Mosqueda
<b>Clarity Solutions, Inc</b>	Melissa Zaruba	Fred Brakeman
Brian Davidson	Shaneka Bratton	Martin Skiby
<b>CRW Consulting</b>	<b>E-Rate Consulting, Inc.</b>	<b>Janice Meyers Ed Consulting, LLC</b>
Chris Webber	Vincent LaForgia	Janice Meyers
<b>CSM, Inc.</b>	<b>ERATE ONLINE</b>	<b>Kellogg &amp; Sovereign Consulting</b>
Karen Hall	Amanda Miguel-Rua	Christina Bailey
Michelle Harken	Brian Grimmer	Debi Sovereign
Rosy Campos	Karen Pavon	Jane Kellogg
<b>Educational Funding Group</b>	Meg Serke	Jennifer Williams
Steve Kaplan	Megan Restieri-Slingo	Mai Fields
<b>E-Rate &amp; Educational Services</b>	<b>E-RATE ONLINE</b>	Mandy Wood
Kristina Garrett	Ian Starker	Riley Harpole
Lee Anna Dugue	Mary Jo Sagnella	Teagan Vick
Shirley Bauer	<b>E-Rate Provider Services</b>	<b>On-Tech Consulting, Inc.</b>
<b>eRate 360 Solutions LLC</b>	Bob Richter	Dan Riordan
Fred Josephs	<b>Funds For Learning</b>	<b>Service Associates, Inc.</b>
John Harvey, Jr.	Micah Rigdon	Oliver Frail
<b>E-Rate Advantage</b>	Nick Shipley	<b>Telesolutions Consultants, LLC</b>
Ben Sniecinski	<b>Funds For Learning, LLC</b>	Jerry Steinberg
<b>E-Rate Central</b>	John Harrington	<b>VST Services, LP</b>
Alicia King	Sean Lock	Maryann Staab
Andy Eisley	Verlyne Jolley	Russell Neal
Caroline Wolf	<b>Infinite Connections, Inc.</b>	Tracy Neal
Jessica Olsen	Jane Kratochvil	

For addresses and contact information, see [www.e-mpa.org](http://www.e-mpa.org).

Respectfully submitted,

E-RATE MANAGEMENT PROFESSIONALS ASSOCIATION



/s/ Melinda A. Van Patten

Melinda A. Van Patten, President

cc: Elizabeth Drogula  
James Bachtell  
Aaron Garza  
Bryan Boyle