

**E-Rate Regulatory Reform:
CCSSO Presentation to the Federal Communications Commission,
Schools and Libraries Division of the Universal Service Administrative
Company**

Discussion Issues Overview:

Reforming Internal Connections Funding:

- Change Discount Matrix for Internal Connections – Lower Internal Connection discount rates:
 - Promote equity and extend funding to more applicants.
 - Discourage fraud, waste, and abuse
 - Prioritize IC commitments based on Priority 1 discount rates

Reform the Form 470 Competitive Bidding Requirements:

- 470 modified to serve as a public notice of intent – remove 28 day waiting period.
- Use current state procurement rules as basis for approval, eliminating need for 470 posting for applicants subject to state procurement regulations.

Choice of Payment Format –

- Applicant choice of discount or reimbursement process.
- Act states program is a discount program vs. reimbursement

Direct Payment to the Applicant:

- Streamlines SLD audit and review -- lowers administrative costs.
- Ensures applicants receive funds.
- FCC must address COMAD

Service Upgrades and Changes: Allow Expedited Changes and / or Service Upgrades

- Allow Higher Cost Products/Services as Replacements so long as the Applicant does not exceed funding cap.
- Under current process, applicant is unable to take advantage of technology advancements.
- Current regulations confuse and deter applicants ability to take advantage of best-pricing and competitive markets.

FCC / SLD Notification of Policy and Procedural Changes:

Notification of Administrator's Decisions and Reviews

- Post on website and inform state coordinators.
- Applicants should be given 60 days to appeal from date of notification.

Administrative Compensation for States or Other State Entities that Serve Many of the Administrative Requirements of the Program

- State's provide many free services to SLD and individual E-rate applicants – masks the true administrative program costs.
- Provide compensation to states for services provided.

Error correction during SLD review

- When minor error detected on application increasing funding to applicant, SLD should increase commitment amount.

1. Reforming Internal Connections Funding:

Promoting Equity and Reducing Incentives for Waste, Fraud and Abuse

As the E-rate program moves to its sixth funding year, we believe the FCC/SLD needs to look at reforming internal connections funding to promote a wider dispersion of funds among applicants and reduce the incentives for fraud, waste and abuse. The current system sends the wrong signals to applicants and vendors and has led – in our opinion -- to serious cases of waste, fraud and abuse.

Applicants in the 90% discount categories are given every incentive to maximize the internal connections requests, leading to distortions in demand and pricing that bloat internal connections requests. These applicants have also been easy prey for questionable vendors and consultants who try to convince the school or library to apply for large sums of funding, regardless of whether the applicant actually needs the service or equipment.

The complexity of E-rate forms and regulations also fosters an atmosphere ripe for applicants to abdicate the administration, application and decision-making responsibility for contracts to vendors. Recent cases of highly questionable vendor practices, including the *Mastermind* case, were concentrated among the highest discount schools. Clearly, any vendor proposing a “one-stop, sign-here, no need to pay a thing” alternative will get noticed by the applicant community.

We also submit that the current system does not promote equity. Many of our technology-poor schools are now at the 50-80% discount levels, not in the highest-

discount band. Many of these “less affluent” schools cannot acquire enough local funding, nor are not deemed poor enough to qualify for large Federal grants. In keeping with the national policy of “No Child Left Behind”, children in lower 50-80% discount schools should also be given the opportunity to use E-rate monies to procure needed internal connections, maintenance, and other services to improve teaching and learning.

We propose that restructuring the disbursement model for internal connections will allow them to access more of the program’s resources. By lowering the discount levels to a 70% cap, you are allowing more applicants to avail themselves of the resources, and you also provide less incentive for waste, as any applicant would have to contribute at least 30% of the cost, not the current 10%.

Specifically, we propose the following:

- Reduction of the discount matrix grid for internal connections from the current 20-90%, to a more modest 40-70%, with a revised discount matrix to follow below.
- Continued PIA scrutiny to assure that applications and vendors do not inflate prices on goods and services to make up for the lower discounts.
- Strong sanctions for vendors that willfully abuse program rules through “kickback” schemes or other arrangements that provide monetary paybacks to applicants to purchase their services. These arrangements lead to increased prices, waste and abuse of the program.

- Eligible Product Reforms: The FCC and the SLD need to take another look at the products and services eligible under internal connections to assure that these remain consistent with the original intent of providing access to modern telecommunications services and access to educational content.

A revised discount grid for Priority 2 – Internal Connections would be as follows:

<u>(F/R Lunch Eligible %)</u>	<u>Discount</u>	<u>Alternative</u>
Less than 1%	0	20
1% to 19%	40%	30
20% to 34%	50%	40
35% to 59%	60%	50
60% to 74%	70%	50
75% to 100%	70%	50

Per the proposed discount matrix, we would also eliminate any Urban / Rural distinctions. This distinction was originally applied to telecommunications services where high-cost local rural loops were important to assess affordability. We submit that this distinction is much less relevant for internal connections equipment, hence no need for the urban / rural split here. Finally, we believe that fewer discount levels, not more, will lead to more equitable distribution of the internal connections monies.

Combined with these changes, there must be a better method to prevent “gold plating” by high-discount entities repeatedly requesting discounts on internal connections whether they are needed or not. A remedy is to tie the applicant’s prior internal connections FCDL(s) to the applicant’s current 471(s) in the PIA and audit phases. An applicant who requests the functionally equivalent product for the same purpose and/or location two or more years in a row needs to be subject to special PIA and audit processes that place an additional burden of proof on them to show that: (a) these repeat purchases are essential to maintaining Internet connectivity; and (b) the use or disposition of the prior year’s discounted equipment is within program rules. In sum, there must be a correlation established between an applicant’s prior internal connections discount awards and those sought in subsequent years. Currently, the lack of such special targeting invites waste, fraud, and abuse, with some schools now proposing such high-cost products such as fiber all the way to the desktop.

2. Reform the Form 470 Competitive Bidding Requirements:

The Administrator has stated that the single most common reason for denying funding is the applicants’ inability to comply with the Program’s requirements for the posting of the Form 470 and the 29 day window requirement. In an effort to assist the applicant community, we recommend that the FCC/ SLD reconsider the value of the current process and procedure for the Form 470 and its 28-day window bidding requirement.

The SLD and the FCC need to reconsider the implementation of the Form 470 and its underlying rationale. We submit that from an applicant standpoint, the current system has -- more often than not -- failed to accomplish its worthy goal of inciting competition. First, in remote rural areas, applicants have rarely received responses from additional, capable bidders interested in offering services, and most of these have been for very scarce internal connections services, not relevant to their requests. Second, in urban areas, applicants have been inundated with advertisements and marketing materials not relevant to the particular request. Worst of all, most smaller applicants have not received any response to the posting, even from the only provider eligible to provide service, the local telecommunications carrier. This has caused applicants to view the Form 470 as merely a stumbling block to acquire services and discounts, rather than an opportunity for broader access to competitive markets.

We submit that school districts most often have their own state and local procurement rules and practices that have provide ample and appropriate bidding processes and procedures. In contrast, the current 470-based bidding process has added little to the competitive marketplace and has turned out to be a major stumbling block for the applicant community.

We offer a middle ground solution which addresses the statutory intent of allowing notification of all potential bidders while eliminating some of burdensome aspects of the Form 470:

- First, eliminate the 28-day wait and use current state and local procurement rules to govern competitive bidding processes.
- Second, simplify the Form 470 so that it is a single-page, public notice of intent without a bidding deadline requirement. Most school districts already employ some form of this notice under any applicable state or local procurement rules.

This Form could be updated at any time of the year if there is a substantive change in the services needed. This change to a notice provision would streamline the application and review process while maintaining fair and equitable access for all service providers.

3. Choice of Payment Format -- Direct Payment to the Applicant:

While **applicant** choice of discount or reimbursement should be the goal of the program, after five years, it is clear that, for the most part, the program is a **reimbursement**, not a discount program. Most of the larger telecommunications carriers cannot – or have been unwilling – to make the necessary changes to allow it to be a discount program. Although the FCC states that it is not clear who retains the ultimate decision on whether or not to place discounts on bills, the reality -- and the clear, but unwritten rule -- is that it is the vendor's decision and the applicants have no recourse. In contrast, we firmly believe the decision to use discounts or reimbursement should be the applicant's decision.

Requiring applicants to pay 100% of their bills, complete an additional series of Forms, track down a vendor representative to verify and sign a form, then wait for the SLD's check to the vendor, then wait for the vendor to send a check back to the applicant is an enormous burden for the applicant. In sum, we believe that the form of payment, whether discount or reimbursement, needs to remain with the applicant, not with the vendor.

For those applicants who choose -- or most often have no choice -- to use the reimbursement (BEAR) process, many have commented that a major stumbling block for the program is the post-commitment funding procedures. We believe that much of the program's administrative burden for applicants and vendors can be lifted -- and accountabilities streamlined -- by allowing reimbursement payments directly to the applicants. The existing reimbursement process between vendor-applicant-SLD-vendor-applicant has led to applicants spending months working through the application process with the SLD, only to find out that the actual monies have to be acquired by the applicant through the vendor, often leading to another series of delays, or worse yet, in cases where the vendor ceases business, complete loss of discounts to the applicants. We note that many vendors are to be commended for their efforts to streamline this aspect of their business.

We also believe the current discount / reimbursement system has been a source of problems for some vendors, especially those who provide telecommunications and internet access services on a monthly recurring charge basis. Some of the largest vendors cannot constantly modify their billing systems fast enough to accommodate complicated changes in billing.

We also submit that any audit and review processes are enhanced through direct payment to the applicants. Clearly, any review or audit responsibility should fall to those who receive the monies. If the school receives the monies, it can keep cleaner, tighter records of how much it spent and to whom. Many applicants already keep records as part of other state and federal education grants.

The current vendor payment system has not eliminated abuse of the program. We have seen cases of vendor abuse of the payment system, including incidents of excessive charges and payback schemes by vendors who take advantage of the poorest schools with the highest discounts. Also, the current rules and procedures allow a vendor to submit the Form 474-Service Provider Invoice Form -- without applicant approval. This allows less than honest vendors to submit invoices -- and receiving payment -- for work that was not completed, or not completed to the applicant's satisfaction. We believe that so long as the Rules on eligible purchases and use of funds are clear, the schools should be able to support its own accountability without the need to so heavily depend on vendors.

We propose that allowing direct payment to the applicant will -- at its core -- streamline the process and allow the SLD a more direct line of review and audit. We understand that parties may cite a litany of rules, laws and procedures that disagree, but we don't find any Rules that state prohibit direct reimbursement payments to the applicants. Regardless, we submit that if applicant needs are paramount; and, if streamlining the program and allowing for cleaner, simpler, more direct review and audit processes are the goals of this NPRM -- then the Commission will direct parties to work through the important details of this much-needed reform.

4. Service Upgrades and Changes:

Allow Expedited Changes and / or Service Upgrades

We strongly encourage the Commission to reform their current service change policies and procedures. Currently, applicants can only change services in the most narrow of circumstances, and are, in effect, prohibited from upgrading services at anytime during the funding year. Because of the current policy and procedures, applicants' hands are tied from implementing technologies they need, and subsequently, are left with potentially higher prices for dated equipment, or, just as serious, leave committed, eligible monies unspent.

Historically, time lags between the filing of the Form 471 and the receipt of services are usually 6 months, often more. While arguably the time is a necessary part of the program, markets, products and technological advances move forward. Prices of services and equipment change, as newer products with similar or better functionalities are available at the same or lower prices. As well, the applicant may have procured additional funding through other non-e-rate sources, enabling the purchase of greater bandwidth or services without the need for additional program funds, but with fare better outcomes for the applicant.

We believe the Commission should permit applicants to upgrade their services or equipment anytime during the funding year with a minimum of bureaucratic delay. As

long as their original funding commitment cap was not exceeded, applicants should not be penalized, for example, from investing in greater bandwidth, or availing themselves of a contract or tariff change in price, or the latest server, router or switch with similar or improved functionality. In this case a simple signed notice to the SLD which describes the change / substitution, should be enough to let the process move forward. This notice would also provide an assurance that the change was permitted under any applicable state or local procurement rules. This scenario is very similar to the budget/contract revisions that are permitted under many State and Federal technology grants.

Ironically, the inability “unlock” oneself from prices set 4-6 months in advance may hurt the applicant, the process and place a chill on the original Congressional intent of spurring competition much more than allowing a relaxed set of rules. The “lock” provides no incentive for vendors to pass on the cost savings and/or new products to the applicant. Finally, we submit that requiring applicants to stay with the “original arrangement”, while a fast-changing market moves forward, does little to support the use of modern telecommunications technologies for schools and libraries.

5. FCC / SLD Notification of Policy and Procedural Changes:

Notification of Administrator’s Decisions and Reviews

With a program as complicated as E-rate, mistakes, inconsistent policies and practices are bound to happen. The more complexity, the more room for error.

Accordingly, we believe the SLD has a duty to inform the applicant community of decisions, appeals, or other remedies that have been provided, and allow them a relaxing of the Rules to allow similarly situated applicants to file appeals.

We believe that the current system of applying favorable policy changes only to applicants who had appealed within their original window, is essentially unfair. Accordingly, we strongly encourage the Commission to grant relief to districts who file an appeal based on an SLD or Commission decision, but cannot do so because the original 60-day appeal window has passed. On several occasions, applicants have found themselves caught in a situation where a decision was made that they could have benefited from, but they could not do so because they didn't have an appeal on file at the time

In addition to the issue of fairness, we believe that the selective application of policy revisions only to appellants is placing an increasing administrative burden on both the SLD and the FCC. Unless the process is changed, and the SLD is permitted to retroactively provide relief to applicants affected by FCC decisions, applicants have every incentive to appeal any and all unfavorable SLD decisions in the hope of an eventual policy reversal. Indeed, numerous state E-rate coordinators routinely urge applicants to appeal all SLD denials or rejections. A process that encourages many -- and often -- redundant appeals is highly inefficient and has already created a daunting backlog of appeals at both the SLD and the FCC.

From discussions with the SLD, we understand that one potential problem with applying policy revisions retroactively is the ability to identify affected applicants and the funding implications. Applicants with pending appeals are obviously easy to identify; the identification of those who did not appeal could be more difficult, but by taking some of the steps outlined here, can lead to a more manageable and equitable process.

Two conditions are proposed:

- The SLD publish on its web-site any appeals decision that has a larger, systemic, policy-making impact. The announcement should detail the conditions of the appeal and the necessary conditions to apply for retroactive relief.
- The SLD notify state coordinators of the decision to allow them to also notify their respective applicant community of the decision and its relevance.

The FCC / SLD would then allow a 60-day appeal window from the date of the announcement. Any applicant that can document their similar-case status and be affected by the revised policy would also be provided appropriate relief.

6. Administrative Compensation for States or Other State Entities that Serve Many of the Administrative Requirements of the Program

The FCC and SLD have done an excellent job in trying to work through a very complicated program. The FCC and the SLD have much to be proud of when they state

in the NPRM that the program's administrative expenses -- as a percentage of total funding -- are among the lowest of any other federal program. However, we also contend that the true administrative costs are grossly underestimated. The bulk of the SLD's administrative dollars flow to the process of application data-entry, review, and re-review. A relatively small portion is directed at customer outreach, leaving most of these costs to States and to applicants themselves. We respectfully ask the FCC to direct the USAC / SLD to work with States on a form of administrative compensation for their work in the program.

Currently, assistance is provided by the SLD and its contractors on an as-needed, as-requested basis over the phone and through a web-site. Rarely does the SLD Staff venture outside of the Washington area to conduct outreach sessions. Recruitment and assistance with complicated application forms; verification of entity eligibility, subsidized lunch figures; entity eligibility verification; review and approval of technology plans and other important duties are largely left to States and more local entities. Those costs are real and are being borne by the states and/or the applicants. Some states have stepped up and provided the assistance, while others have done less due in large part to strained state budgets and other educational priorities.

We submit that experience has taught everyone involved that applicant-assistance responsibilities are many, varied and are year-round. The program typically includes the following steps:

- Providing general program information and notice of program changes and filing deadlines;
- Assistance with filing the Form 470;
- Assistance with any Request for Proposals (RFP's) or requesting bids from vendors;
- Assuring that schools have valid technology plans and assisting them with E-rate-specific requirements and renewal timelines;
- Assistance with filing the Form 471;
- Assisting with pre-commitment reviews and information requests;
- Filing Form 486 and complying with CIPA Rules;
- Filing the Form 472-BEAR (hopefully no more than twice a year per vendor) to actually receive Program monies;
- Assisting schools to “Bird-dog” reimbursement checks from some vendors that may not have sent the reimbursement monies back to the applicant;
- Assisting schools with appeals on administrator decisions;
- Serving as a feedback loop to SLD and FCC Staff on initiatives and updates to the filing and reporting systems.
- States also have the “informally formal” responsibility of:

- Approving Technology Plans

- Verifying entity eligibility, especially for non-public and new construction.

- Verifying Free/Reduced Lunch Data for applicants.

The E-rate program does not fund any costs for E-rate consultation at the state level, even as the SLD has come to heavily rely upon this “informally formal and free” help from the States. While some states have been able to afford to hire full-time or part-time E-rate coordinators to help their schools and libraries apply for funding, budget shortfalls in many states prohibit the hiring or re-allocation of such personnel.

We submit that State coordinators play an important role in reviewing applications. State coordinators have provided important assistance for applicants and the SLD, including informal assistance on Item 25 reviews. The complexity of the program requires many applicants to request face-to-face, hands-on assistance, not phone call or web-site help. As the program becomes even more complicated, it is no wonder more applicants have either dropped out of the program or surrendered their applications to consultants or vendors, often for a fee.

We respectfully ask the FCC to direct the USAC / SLD to work with States on a form of administrative compensation for State’s work on the program. In their response

to the NPRM, the CCSSO estimated the costs of applicant outreach, which includes: assistance on applications, reviews and appeals; responding to review and verification calls from the SLD on eligible entities and free/reduced lunch numbers; and the costs to peer-review and approve technology plans. The CCSSO's members estimated their annual cost at \$330,000 per state. As well, many states continue to provide assistance -- as far as the law and their resources allow -- to its program-eligible, non-public schools so they are not left out of the process.

Without question, States will continue its efforts to support the program, as a continuing service to its schools and in total support of the program's goals. However, the FCC does need to assess the true administrative costs of the program and compensate states accordingly. We ask that the Commission direct the USAC/SLD to engage in discussions with States, State Educational Agencies, or any State-assigned agency that assists the SLD and applicants with Program administration, on the most effective, efficient and equitable method of compensation for Program-related assistance.