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Federal Communications Commission
Office of the Secretary

Comments of Greg Weisiger, Representing the Council of Chief State School Officers E-Rate Alliance
Public Forum on Improving Administration of the E-Rate Program
May 8, 2003

Thank you Mr. Chairman, Commissioners. Thank you Commissioner Abernathy for your leadership in convening this Forum. It is my pleasure to come before you today representing the Council of Chief State School Officers E-rate Alliance and commonwealth of Virginia. I would also like to thank the Commission for issuing the Second Report and Order. In the Order you adopted many of the suggestions from the Alliance.

The Second Report an Order will simplify the E-Rate program for applicants. We believe implementation of these new rules will reduce the application denial rate significantly from the current unacceptable level of 20 percent, thus fostering one of your stated goals – reducing the number of appeals.

In particular, we applaud your decision to expand the definition of "educational purpose" to virtually all activities within a school or library. We look forward to discussions with the Wireline Competition Bureau on the exact definition of "integral, immediate, and proximate."

To address waste, fraud, and abuse issues, 31 members of the Alliance met for three days in Washington last week and presented recommendations to the Wireline Competition Bureau. The recommendations are extensive and provide the commission a number of

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options. We believe these recommendations along with the Second Order will greatly improve many aspects of the program. Our recommendations can be summarized under several overriding themes: Accountability, Simplicity, Continuity, and Education.

Accountability

Applicants are ultimately accountable for the services they order. Applicants sign E-Rate certification pages and order services, not vendors. On this issue, we can take some lessons from Virginia applicants. In the first six years of the E-Rate program, there has been absolutely no evidence of waste, fraud, or abuse by Virginia public school or library applicants. E-Rate funding requests for the entire state total an average of $30 to $40 million per year for a state with 1.2 million public school students and over 1,800 schools. This equates to approximately $30 per public school student.

Applicants in Virginia request discounts for necessary and reasonable services that meet the connectivity needs of schools or libraries. They are accountable to school boards and other stakeholders. The Alliance supports holding applicants and vendors accountable for their actions through debarment and prohibition from participation in the program, even beyond the parameters enumerated in the Order. We also support a test of "economic reasonableness" for funding during application review, as articulated in the Telecommunications Act.

Simplicity

Each year approximately 20 percent of E-Rate applications are denied. The denial rate is a bit less in Virginia, but still unacceptably high. If waste, fraud, and abuse is a non-issue in Virginia and nearly 20 percent of our applications are denied, there must be some other root cause. According to SLD documentation, two percent of applications are denied because of 28 day Form 470 posting violation, three percent for failing to sign certification pages, and three percent because of the 30 percent policy. Many of these denials are for procedural errors or confusion of eligible services, not waste, fraud, and abuse issues. The program must be made more simple.

The Alliance made several suggestions to foster program simplicity including elimination of the Form 470, eliminate block 3 of the Form 471, and allow Form 486 certification on the Form 471 for certain services.

Overly complex policy is a major contributor to applicant abdication of responsibilities to vendors who more than happy to help applicants through the process. Evidence from the Year Five denials points to this. The Second Report and Order addresses a great deal of applicant confusion with the new definition of educational purpose.

Continuity

Recently I had occasion to speak to one of the Program Integrity Assurance representatives reviewing Virginia applications. During our conversation the rep

indicated that this was a bad day. If the Virginia PIA rep, reviewing millions of dollars of Virginia applications, was having a bad day, that could only mean subsequent bad days for Virginia applicants. I asked if there was anything I could do to help the situation. The rep said no and then volunteered that he or she may have to quit soon. The rep continued that the position was temporary and came with no benefits.

In order to facilitate application processing, USAC hires temporary workers each year. They are trained in an extensive two-week regiment and thrown on the front lines of application review where they must review applications in accordance with FCC regulations and SLD policies. They must deal with sometimes frustrated applicants and sometimes frustrating state coordinators. They must learn nuances of state or local procurement law and particulars of state or regional contracts. When they have done a good job and finished reviewing applications, their reward is termination.

Virginia was fortunate in Year 5 of the program to have the same reviewer from Year 4. The majority of applications were processed prior to July 1. This year we have lost one reviewer and the second is wavering. I and my counterpart at the Department of Information Technology must spend considerable time with each new reviewer explaining several statewide contracts. The first wave of funding in year six indicates a number of denials for a well established statewide contract, perhaps we did not spend enough time briefing our reviewers this spring.

The Alliance feels it is important that there be continuity from year to year and urges that some mechanism be established to maintain full time status for a core contingent of PIA reviewers beyond the current full time employees. These employees could be used as part of the enforcement team, applicant help desk, or other duties. More importantly, they will significantly streamline the review process in future years with invaluable institutional knowledge. Finally, being intimately familiar with the program, throughout the year, they will be better equipped to detect waste, fraud, or abuse.

Education

Informed applicants are far less likely to abdicate responsibility to vendors with too good to be true sales pitches. The Alliance feels strong state leadership is important to keep applicants knowledgeable of program rules and policy changes. State E-Rate coordinators also assist PIA during review of applications, verification of school lunch data, or verification of the existence of schools or libraries. State E-Rate coordination is done on a voluntary basis. Recent state budget cuts have resulted in layoffs of several coordinators. The Alliance supports funding for each state and territory for specific E-Rate activities within each state and territory. This could be accomplished as a contractual or direct reimbursement mechanism.

Finally, the Alliance agrees with the commission that most applicants lack experience and resources when filing regulatory documents with the commission and we applaud the decision to permanently set the appeal deadline at 60 days. Further, the Alliance feels

strongly that applicants lack familiarity with commission practice and procedure. Consequently, many appeals to the commission lack required elements and are denied on technicalities. The Alliance asks the commission to view E-Rate appeals administratively, with more liberal use of regulatory waiver in the absence of evidence of waste, fraud or abuse.

There appears to be a misconception of the E-Rate program among some decision makers. E-Rate has been called a "grant" program by some and an "entitlement" program by others. Some referring to E-Rate as a grant program go further to classify it as a "competitive" grant program. The fact is, under regulations and policies currently in place, the program is all three. The Commission, with future Orders can equitably and fairly distribute limited funding to more beneficiaries and limit the "competitive" aspect of the grant portion of E-Rate regulations.

The Telecommunications Act of 1996 specifies in section 254(h)(1)(B) that telecommunications services shall be offered at discount prices to schools and libraries. The law is categorical on this point. This language was established to model E-Rate after existing Universal Service programs – High Cost and Low Income. Under the Act and subsequent FCC regulations, schools and libraries would receive discounts on telecommunications (and Internet) services a discounts ranging from 20 to 90 percent depending on location and poverty level. This part of the program is absolutely an entitlement for beneficiaries.

However, section 254(h)(2) instructs the Commission to establish competitively neutral rules to provide "Advanced Services" to schools and libraries. The rules shall "....enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services..." This language, describing what is now Priority two (internal connection) services, is much less restrictive and thus results in the "grant" portion of the program. A fair number of applicants, often encouraged by vendors have taken the notion of "grant" to an extreme requesting very expensive products and services, making it appear more competitive. While the debate over eligibility of internal connections under the law continues, the Commission rightly segregated the two categories.

The challenge now before the Commission is how to provide funding for more beneficiaries under Priority two services. In meeting this challenge, the Commission can also significantly reduce program waste and abuse.

Based on six years of experience, we believe there is relatively little program waste or abuse in the telecommunications bucket of service. There appears to be somewhat more in Internet access as exemplified by the Connect2 and Mastermind revelations. Even with these highly publicized vendors, the waste and abuse problem does not appear excessive with Internet Access. We believe the reason for relatively modest funding requests for these services is the fact that telecommunications and Internet access are somewhat self regulating. For example, a 20 classroom school could reasonably justify no more that five to ten telephone lines for the entire school, less with a PBX. Internet service, including

streaming video, could be accomplished with no more than a T1 line. Even with a 90 percent discount, most school administrators and library managers would limit requests to no more than necessary connections.

The science of internal connections however is much more inexact. Some administrators may insist that fiber to the desktop, with associated expensive hardware is best for the school. A state-of-the-art PBX with multiple ports for each classroom would also be nice. Finally, a maintenance agreement and help-desk operation would round out the request. If all this could be accomplished with a local outlay of only ten cents on the dollar, the deal may be too good to resist. This scenario appears to have been played out numerous times during funding years four and five.

The Commission now has an opportunity to establish new regulations to curb extravagant internal connections funding requests before applications for Year seven begin flowing to SLD. Since many applicants appear to lack accountability, more proscriptive regulations for Priority two services are needed. The Alliance has made several suggestions including reduction of the discount rate for internal connections, every other year equipment funding, and limitations on maintenance. We have also asked the Commission to consider "economic reasonableness" as criteria for evaluation. Individual commissioners have also made excellent suggestions in statements.

We look forward to working with other constituent groups, applicants and the Commission on these and other suggestions to establish a balance between legitimate

applicant need and limited program resources in our united desire to foster the goal of more equitable funding for beneficiaries while reducing waste, fraud, and abuse.

Thank you again for the opportunity to address the Commission on this important topic.