

**Before the  
Federal Communications Commission  
Washington DC 20554**

**In the Matter of:**

Schools and Libraries Universal Service     )  
Support Mechanism                             ) CC Docket No. 02-6

**Comments of Greg Weisiger on the Second Report and Order and  
Notice of Proposed Rule Making**

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## **Overview of Comments**

It is again my pleasure to come before the Commission with comments on the Universal Service Support Mechanism for Schools and Libraries, better known as E-Rate. I have been intimately involved with the program since its inception and have witnessed first hand the program's incredible successes across the nation and commonwealth of Virginia, as well as its dismal failures. Fortunately, the successes far outweigh the failures.

The Commission took bold and positive steps for improvement of the program with the Second Report and Order (Order). In particular, I applaud the Commission for the new definition of "Educational Purpose," with inclusion of language giving telecommunications and Internet services and delivery to and within schools and libraries a presumption of eligibility. This position will simplify the application process for applicants and reduce confusion with the Universal Service Administrative Company (Administrator) when reviewing applications.

Codifying the 30 percent policy is a positive step. I ask the Commission to address the current implementation of this policy by the Administrator.

The Sixty-Day appeal deadline is another outstanding move. I ask the Commission to expand the logic behind this decision to include evaluation of appeals.

Most applicants are honest. When faced with an honest applicant requesting a waiver or appeal where there is no indication of waste, fraud, or abuse I ask that their prayers be answered.

Debar bad actors – service providers and applicants.

I concur with SECA and others that the single best tool to counter waste, fraud, and abuse is reduction of the discount rate for internal connections. This should bring internal connection funding to 70 or even 60 percent applicants for the first time in years. I also reiterate the Commission should address the following core areas: accountability, simplicity, continuity, and education.

I reconsider my previous comments and conclude that block grants or state funding caps will not prevent waste, fraud, or abuse.

Commissioner Adelstein has a good idea with establishing a minimum level of funding. This suggestion should be turned upside down.

Finally, the Commission should act before the funding Year 2004 window opens to implement at least one measure to prevent waste, fraud, and abuse.

### **Codification of the 30 Percent Policy**

Codification of the 30 percent policy is also a positive step. During the first year of E-Rate, the policy was more liberal. Naturally, it was tightened as the program was better understood by all parties. The exact denial threshold was however kept secret from applicants because of a fear by the Administrator that if applicants knew the threshold, they would apply for ineligible services up to the threshold, hoping the requests would slip by reviewers. I applaud the Commission's move to shine the light of certainty on this issue.

I also applaud the Commission's stance on choice of payments for applicants. I and other E-Rate applicant advocates have requested this for years.

## **Sixty-Day Appeal Deadline**

Establishing a 60 day window and postmark timing method for accepting appeals from E-Rate applicants departs significantly from traditional Commission practice and is another positive move. It also signals to bureaus within the FCC that the Commissioners view E-Rate beneficiaries differently from telephone companies, broadcasters, satellite operators and others whose primary business revolves around Commission regulation and adherence to subtle nuances of regulations, case law and Commission practice. One striking and positive statement with the new appeal regulations is the ability for applicants to swear they filed an appeal on time, should the postmark be unreadable.<sup>1</sup> For the first time the Commission will allow parties filing official paperwork with the Commission the ability to substantiate an unclear event, using only their sworn word. Perhaps this will open the door for similar verification of equally nebulous events such as Administrator misplacement of paperwork. Currently, should the Administrator lose all or part of an E-Rate application, the burden of proof is laid squarely on the applicant to prove the missing paperwork was delivered to the Administrator – an almost impossible task if only a few pages were lost. In such instances, if the applicant is given the opportunity to swear the application was delivered complete, a number of improper denials can be overturned on appeal.

## **Applicants Are (Honest) People Too**

Additionally, It is my sincere hope that it was the Commission's intent to treat applicants differently in matters before the Commission with language of the Order saying: "Unlike many parties that typically practice before the Commission, many

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<sup>1</sup> *Second Report and Order, Docket No. CC 02-6, Released April 30, 2003 (Order) at 57*

applicants in this program have no experience with regulatory filing processes.”<sup>2</sup> Does this language send a message to the bureaus with regulatory authority over applicants that on appeal applicant arguments should not be held to the same standard as a Verizon or AOL/Time Warner? I certainly hope so. Thus, an appeal from Sister Nina requesting waiver of a Form 472 deadline for her \$600 discount because the only person knowledgeable of E-Rate at her school was on maternity leave when the form should have been filed could be approved! As it stands now, Sister Nina does not have a prayer with such appeal. I note that the number of such appeals are relatively small in light of the thousands of applications reviewed by the Administrator.

### **Throw the Bums Out**

I support the Commission’s initial move on program debarment for service providers and applicants. I also support debarment for applicants and service providers that willfully and repeatedly violate program rules. The Commission must carefully craft such language and adhere to a high standard of proven violations. I agree with Commissioner Adelstein that debarment should include different levels of treatment for different violations. I do however depart from Commissioner Adelstein’s suggestion that debarment could be used for entities found guilty of civil or criminal violations beyond (not associated) with E-Rate. If civil or criminal conviction for offenses unrelated to E-Rate were a test for debarment, I fear there would be precious few service providers available to provide E-Rate service, based on daily headlines of criminal convictions in corporate headquarters. Again, debarment rules must be carefully implemented and limited to E-Rate violations. Considering the ongoing investigations by various parties,

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<sup>2</sup> Order at 56

there should be a healthy crop of debarred service providers and applicants by next funding year.

### **Waste, Fraud, and Abuse Issues**

I applaud Commissioner Abernathy's leadership with the May 8, 2003 Forum on Streamlining the E-Rate Program. The open and frank discussions were positive for the program and have already lead to some administrative enhancements.

On waste, fraud, and abuse issues, I support the Comments of the State E-Rate Coordinators' Alliance (SECA). In particular, the proposal to adjust the discount rate to a maximum of 70 percent for internal connections will eliminate a great deal of program waste and abuse. The persuasive arguments presented in the SECA Comments for adjusting the discount matrix will do more to reduce waste and abuse of the program than an army of auditors. It will give applicants the most powerful incentive of all – it would cost them an extra 20 percent of their own money to engage in wasteful contracts!

I reiterate my Comments at the May 8 Forum for suggestions on prevention of waste, fraud, and abuse.

#### Accountability

Applicants must be held accountable for their actions. If they abdicate responsibility for procurement of services, or seeking only “reasonable” services, they should pay with denial of funding. If applicants or service providers knowingly and willfully violate program rules, they should be debarred from participation in the future. Such is the price for program abuse.

#### Simplicity

Each year approximately 20 percent of E-Rate applications are denied. 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.

SECA 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. The Second Report and Order addresses a great deal of applicant confusion with the new definition of educational purpose.

#### Continuity

It is important that there be continuity with the Administrator from year to year. 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. 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. I support 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.

### **Pebbles Still Fall in Ponds, or the Case AGAINST State Caps or Block Grants**

In my Comments for the First Report and Order in March 2002, I suggested the notion of state funding caps for prevention of waste, fraud, and abuse (**A pebble creates a small ripple in the ocean but large waves in a small pond**).<sup>3</sup> This argument was based on the logic that applicants and state coordinators would self regulate funding requests when faced with a limited supply of funding for their state. Applicants that continued to abuse the program would be shamed by their peers to request their fair share of discounts. Upon reflection and witness to the highly aggressive marketing tactics of some service providers, I find this solution would be totally unworkable for prevention of waste, fraud, or abuse.

With a state cap system Virginia applicants would receive a greater amount of money than they currently do. However, such system would not directly address the root cause of waste and abuse of the program – greed and abdication of responsibility. Seeing the waste, fraud, and abuse investigations unfold since filing those Comments 15 months

ago, it is clear some service providers will ruthlessly pursue high discount applicants with slick sales presentations and too-good-to-be-true offers. If technology coordinators reject an offer, the pitch is made to superintendents or school board members. At some point, a deal is done. State caps or block grants will not fix this problem. As the SECA Comments suggest, lowering the discount rate and clarifying the eligible services list will reduce waste and abuse.

### **Minimum Level of Connectivity**

Commissioner Adelstein suggested that perhaps the Commission could establish a “baseline” level of connectivity for funding applicants. After considerable thought and consultation with fellow E-Rate coordinators, I agree with a suggestion of the New York E-Rate coordinator that commissioner Adelstein’s idea should be turned upside down. Rather than setting a minimum level of service that would be funded, set a “hold harmless” level of funding that would be funded with little scrutiny. For example, the minimum level of connectivity could be determined to be 12 telephone lines and a T1 connection for a school between 500 and 1,000 students. Internal connection minimum could be a 100mb/s switched CAT 5 LAN. A discount application for that level of service or below will pass application review with minimal scrutiny – aside from reasonable price and discount rate verification. Should the applicant request significantly more than the minimum amount of service, the application will be subject to additional review with evaluation of technology plans, etc. The minimum level of service matrix should be widely publicized to applicants and service providers. Service providers would eventually sell “E-Rate packaged” service to applicants that meet the minimum standards.

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<sup>3</sup> Weisiger Comments on the First Report and Order and Notice of Proposed Rule Making,

Adoption of this suggestion will drastically reduce administrative review burden as most applicants will choose to conform to the minimum standards verses the alternative of the current inquisition review process.

Additionally, the Administrator could set a maximum level of service or funding that would be approved. In the example of the 500 to 1,000 student school, the maximum could be a DS3 line or \$5,000 per month, whichever is more - for lucky applicants that are able to secure higher bandwidth service using innovative technologies, or established providers such as cable companies. This would take into consideration applicants in remote areas who desire high bandwidth service, even if the cost is high. The maximum level and cost may be publicized, but I can foresee similar service provider “packages” would fall just below maximum levels. This suggestion is far less important than adopting a minimum “hold harmless” policy.

### **Timing is Everything**

The Order was released on April 30, 2003, but did not manage to get published in the Federal Register until mid June. Consequently, the Commission cannot begin deliberation on these important issues until after late August, when reply comments are due. This could mean that additional waste, fraud, and abuse prevention mechanisms will not be put in place by the time the E-Rate Funding Year 2004 window opens in November.

I urge the Commission to work with due haste with implementation of at least some directive to the Administrator to clearly define the Maintenance category of service

for internal connections in the eligible services list. As noted above, this is apparently where the majority of waste and abuse occurs.

Ideally, the Commission will quickly adopt the discount matrix suggested here, in the SECA Comments and elsewhere, before the Year 2004 application cycle begins. If the Commission is able to take this step, the vast majority of waste, fraud, and abuse issues will magically disappear.

### **Conclusion**

The E-Rate program will enter its seventh year of existence with the filing window opening this November. The program has distributed billions of dollars in discounts to schools and libraries across this nation to provide students and citizens connectivity to the relatively new but unquestionably vital resource – the Internet. The program also provides discounts for local and long distance service, enabling schools to afford telephones for teachers. Finally, broadband connections bring distance learning to the remotest town and pueblo. All of this would not be possible without discounts through E-Rate.

On the other hand, the dark clouds of program abuse and program complexity loom. The Administrator, Commission, and even Congress are doing an admirable job addressing these issues. Implementation of regulations from the Second Report and Order and new administrative focus will improve the program in the short term. Adoption of suggestions from this round of comments and closure of Congressional investigations will only serve to strengthen the program down the road.

Respectfully submitted this 18<sup>th</sup> day of July, 2003

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