

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

---

**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. 02-06

**To: The Commission**

**COMMENTS OF THE E-RATE SERVICE PROVIDERS ASSOCIATION  
ON THE ADMINISTRATIVE PROCEDURES APPLICABLE TO  
THE SCHOOLS AND LIBRARIES PROGRAM SUBMITTED BY THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Cynthia B. Schultz  
Paul C. Besozzi  
Patton Boggs LLP  
2550 M Street, N.W.  
Washington, D.C. 20037  
202-457-6000

Counsel to the E-Rate Service  
Providers Association

Dated: April 18, 2008

## SUMMARY

The E-Rate Service Providers Association (“ESPA”) commends the Commission for requiring the Universal Service Administrative Company (“USAC”) to annually submit its Administrative Procedures for review. This mandate provides more transparency and knowledge for participants in the Schools and Libraries Universal Service Support Mechanism (“E-Rate Program”).

ESPA respectfully submits, however, that the Commission should seek formal comment on the Administrative Procedures, which govern the processing of thousands of applications each year, as it does for the annual list of services eligible for E-Rate Program support. Changes or interpretations of the Administrative Procedures should be posted and publicized so that they are not developed and implemented in a vacuum, without the requisite guidance and oversight. The lack thereof only leads to Administrative Procedures which, in effect, are policy and rule pronouncements by USAC, a role that the Commission has expressly forbid USAC to play in administering the E-Rate Program.

ESPA offers specific comments on a number of the Administrative Procedures submitted by USAC. The overall tenor of its recommendations are directed toward greater clarity and certainty; insertion of more due process; and, in certain cases, elimination of procedures that are inefficient or that represent, in ESPA’s view, the exercise of authority that USAC does not have. ESPA intends that its comments be constructive and of assistance to the Commission, and USAC, as it continues its comprehensive review of Universal Service Fund management, administration, and oversight.

**TABLE OF CONTENTS**

- I. BACKGROUND AND INTRODUCTION ..... 2
- II. GENERAL COMMENTS: NEED FOR MORE TRANSPARENCY ..... 2
- III. ESPA’S SPECIFIC COMMENTS ON KEY PROCEDURES ..... 4
  - A. Appeals to the Administrator ..... 5
    - 1. Administrative Procedures (pp. 5-7)..... 5
    - 2. ESPA Comment ..... 7
  - B. Commitment Adjustments and Recovery of Improperly Disbursed Funds Including the *De Minimis* Standard ..... 10
    - 1. Administrative Procedures (p. 10) ..... 10
    - 2. ESPA Comment ..... 10
  - C. Invoicing: Equipment Delivery and Invoice Deadlines..... 12
    - 1. Administrative Procedures (pp.19, 23) ..... 12
    - 2. ESPA Comment ..... 12
  - D. Invoice Deadline Extensions ..... 14
    - 1. Administrative Procedures (p.25) ..... 14
    - 2. ESPA Comment ..... 14
  - E. 15-Day Process ..... 15
    - 1. Administrative Procedures (p. 28) ..... 15
    - 2. ESPA Comment ..... 15
  - F. Contract Extension Deadlines..... 16
    - 1. Administrative Procedures (p. 37) ..... 16
    - 2. ESPA Comment ..... 16
  - G. Cost- Effectiveness Review ..... 17
    - 1. Administrative Procedures (p. 38) ..... 17
    - 2. ESPA Comment ..... 17
  - H. FCC Form 470 Posting Requirements ..... 18
    - 1. Administrative Procedures (p. 46) ..... 18
    - 2. ESPA Comment ..... 18
  - I. Generic FCC Form 470 Service Category Description ..... 19
    - 1. Administrative Procedures (p. 48) ..... 19
    - 2. ESPA Comment ..... 19

J.	Letter of Agency or Consultant Agreement.....	19
1.	Administrative Procedures (p.50) .....	19
2.	ESPA Comment .....	19
K.	Long Term Contracts Review .....	20
1.	Administrative Procedures (p.51) .....	20
2.	ESPA Comment .....	21
L.	Non-Compliant Auditee.....	21
1.	Administrative Procedures (p. 54) .....	21
2.	ESPA Comment .....	21
M.	Selective Review Information Request and Certification.....	22
1.	Administrative Procedures (p. 59) .....	22
2.	ESPA Comment .....	23
N.	Pattern Analysis Information Request and Certification .....	23
1.	Administrative Procedures (p. 61) .....	23
2.	ESPA Comment .....	23
O.	Service Provider or Consultant Authorized to Sign the FCC Form 471 .....	25
1.	Administrative Procedures (p. 63) .....	25
2.	ESPA Comment .....	25
P.	Tainted Forms 470 .....	25
1.	Administrative Procedures (p. 70) .....	25
2.	ESPA Comment .....	26
Q.	Verification that Applicant Posted FCC Form 470 Seeking Category of Service For Which it Seeks Discounts on FCC Form 471. ....	26
1.	Administrative Procedures (p. 75) .....	26
2.	ESPA Comment .....	26
IV.	CONCLUSION.....	26

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

---

**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. 02-06

---

**To: The Commission**

**COMMENTS OF THE E-RATE SERVICE PROVIDERS ASSOCIATION  
ON THE ADMINISTRATIVE PROCEDURES APPLICABLE TO  
THE SCHOOLS AND LIBRARIES PROGRAM SUBMITTED BY THE  
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

The E-Rate Service Providers Association (“ESPA”), acting through counsel, hereby respectfully provides the following comments with respect to the latest summary of the detailed administrative procedures “currently used to lead to Schools and Libraries funding decisions...”<sup>1</sup> submitted by the Universal Services Administrative Company (“USAC”), which administers the Schools and Libraries Universal Service Support Mechanism (“E-Rate Program”) subject to the oversight of the Commission.<sup>2</sup> USAC’s submission of the Administrative Procedures was pursuant to the Commission’s prior directive to do so on an annual basis.<sup>3</sup> These detailed

---

<sup>1</sup> Schools and Libraries Universal Service Support Mechanism, Administrative Procedures, filed Oct. 31, 2007, CC Docket No. 02-6, p. 1 (“Administrative Procedures”). The 84-page filing contains those administrative procedures “that are not explicitly stated in a Commission regulation.” Administrative Procedures, p. 1.

<sup>2</sup> USAC submitted the Administrative Procedures to the Commission on October 31, 2007, when ESPA was first in formation. The Commission did not seek public comment and, therefore, there was no deadline for submitting comments on these procedures which are central to USAC’s administration of the E-Rate Program.

<sup>3</sup> See *In re Schools and Libraries Universal Service Support Mechanism, Fifth Report and Order and Order*, 19 FCC Rcd 15808, 15835 ¶80 (2004) (“*Fifth Report and Order*”).

procedures touch all aspects of the submission, review, processing, resolution, and appeals of applications for E-Rate Program support. As such, the content and application of these Administrative Procedures are of direct and continuing interest to both applicants and service providers who participate in the E-Rate Program.<sup>4</sup>

## **I. BACKGROUND AND INTRODUCTION**

Based in Washington, D.C., ESPA is a national trade association formed in 2007 to serve as the voice of its members to Congress, the Federal Communications Commission, the Universal Service Administrative Company, the media, and the public. ESPA membership is open to E-Rate Program service providers with a current Service Provider Identification Number (SPIN) and in good standing with the E-Rate Program, as well as manufacturers of E-Rate Program eligible equipment. ESPA members deal daily with the Administrative Procedures. ESPA respectfully submits that in light of these constant encounters with USAC's administration of the E-Rate Program employing these Administrative Procedures, its comments, like those of the State E-Rate Coordinators' Alliance ("SECA"), deserve serious consideration as the Commission continues to review USAC's procedures and to conduct a comprehensive review of Universal Service Fund management, administration, and oversight.<sup>5</sup>

## **II. GENERAL COMMENTS: NEED FOR MORE TRANSPARENCY**

ESPA initially commends the Commission on its efforts to bring more transparency and

---

<sup>4</sup> SECA previously submitted comments on a number of the Administrative Procedures. *See* SECA Comments on the Administrative Procedures of the Universal Service Administrative Company Schools and Libraries Program, CC Docket No. 02-6, Nov. 8, 2007 ("SECA Comments").

<sup>5</sup> *See In re Comprehensive Review of Universal Service Fund Management, Administration and Oversight, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11308 (2005) ("Program Management NPRM").

certainty regarding the rules and framework for USAC's administration of the E-Rate Program. However, ESPA respectfully submits that the requirements regarding USAC's Administrative Procedures adopted in the *Fifth Report and Order* did not provide enough clarity in the procedures. .

First, the Commission does not formally publish the Administrative Procedures and seek public comment. For procedures which relate to the entire spectrum of administrative tasks performed by USAC, the Commission should do so, as it now does annually with the list of eligible services for E-Rate Program support.<sup>6</sup> The significance of these Administrative Procedures to participants and beneficiaries of the E-Rate Program are of no less importance and the Commission should seek input thereon. While the eligible services list is tangible, USAC's interpretation of the Commission's rules and regulations are often convoluted and result in less transparency instead of more. Much like USAC itself, the experience of applicants and service providers can provide "insightful information" relevant to the administration of the E-Rate Program, which the Commission is ultimately responsible for overseeing.<sup>7</sup>

Such comments would be relevant and helpful to the Commission's internal review of the procedures contemplated by the *Fifth Report and Order*, including whether any such procedures "should be adopted as binding rules."<sup>8</sup> Certainly, any such codification would require the formal opportunity for public input.

Second, permitting such comment would provide a basis for the Commission to provide formal and public guidance as to the validity and soundness of the procedures. Currently, the

---

<sup>6</sup> See *In re Schools and Libraries Universal Service Support Mechanism Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912, 26928 ¶40 (2004) ("*Third Report and Order*").

<sup>7</sup>The Commission cited USAC experience in processing applications as the source of insightful information about potential abuses of the Program in calling for USAC to annually submit the Administrative Procedures. *Fifth Report and Order*, ¶80.

<sup>8</sup> *Id.*

Administrative Procedures are implemented by USAC in a vacuum, without publicly-accessible guidance from the Commission. The result is a non-transparent, inefficient review process that is not a cost effective use of Universal Service Fund resources.

Third, the lack of transparency is perpetuated because there is no requirement that as adjustments are made in these procedures, or USAC interpretations are rendered, that these adjustments be posted or publicized for affected parties to see and understand. It is unreasonable to expect service providers and applicants to conform to procedural nuances or applications that are in effect adopted in secret and then sprung on participants in the context of an application denial.

Fourth, and finally, a closer look at some of the Administrative Procedures would reveal that they equate to USAC policy and decision-making under a “procedural” label. Such activity is reserved to the Commission, and USAC is expressly prohibited from engaging in such activity.<sup>9</sup>

### **III. ESPA’S SPECIFIC COMMENTS ON KEY PROCEDURES**

ESPA offers the following targeted comments on specific components of the Administrative Procedures.<sup>10</sup> Some of ESPA’s views are consistent with those previously voiced by SECA.

---

<sup>9</sup> See 47 C.F.R. §54.702(c).

<sup>10</sup> In each case, ESPA recites the specific Administrative Procedures as submitted by USAC (including the Further Detail and the page on which the Procedures were explained) and then follows with its specific comments.

**A. Appeals to the Administrator**

**1. Administrative Procedures (pp. 5-7)**

**USAC grants appeals consistent with the following guidelines, assuming no other issues are identified during the appeal review process that would require a denial.**

*When the appeal makes clear that USAC erred in its initial decision.* During the appeal review process, USAC will verify that all original compliance reviews were performed in accordance with program requirements and that the correct decision was made. If USAC made an error during the original compliance review of the application, USAC will correct the error. For example, during Program Integrity Assurance (PIA) review, USAC lowered the discount rate requested by the applicant. During the appeal review process, USAC will determine if the proper procedures were followed and whether the applicant was given the opportunity to provide supporting documentation to justify the higher discount rate. If the appeal review process determines that procedures were not followed and the applicant was not given an opportunity to provide that documentation, the applicant will be able to do so before the appeal review process has concluded. USAC will grant the appeal and approve the discount rate based on the supporting documentation available.

*When the applicant provides USAC with information and/or documentation the applicant did not provide when the original request was made.* In general, a PIA reviewer will contact the applicant and ask for all information necessary to make decisions about an application. If that contact does not occur or the applicant is unable to respond to the request, and funding is denied, USAC may grant an appeal when the appellant provides such original documentation. For example, during PIA review, the applicant indicated that it did not have a signed contract and USAC denied funding because there was no signed contract. On appeal, the applicant claims that the requested services are services provided under tariff and not covered by a contract. USAC will generally accept this new information on appeal.

However, USAC will NOT grant this appeal if the documentation provided on appeal contradicts information contained in the original file and the applicant is unable to resolve the discrepancy. For example, if the applicant had provided an unsigned copy of a contract during the review of its application, USAC will generally not accept the applicant's claim on appeal that it is a non-contractual tariffed service since it contradicts the documentation previously provided.

*When USAC obtains policy clarification or new policies impact the*

*original decision.* If the FCC issues a policy clarification or adopts a new policy that would affect USAC's original decision, applicants who submitted a timely appeal may be given the benefit of the new or changed policies. For example, in the *Bishop Perry Order*<sup>11</sup> the FCC directed USAC to allow applicants to correct certain Ministerial and Clerical Errors that previously were not correctable. USAC applied this new policy guidance to all pending appeals. However, not all policies apply retroactively. For example, in the April 2003 *Second Report and Order*<sup>12</sup>, the FCC directed USAC to consider voice mail eligible starting in Funding Year 2004 (7/1/04-6/30/05). Since that policy change went into effect for a specific funding year, it was not applied to appeals or applications from previous funding years.

USAC will generally accept new information on appeal consistent with these guidelines. If the appellant submits new information on appeal which contradicts information currently in the file, USAC will give the appellant an opportunity to resolve the differences. However, if the appellant is unable to resolve the differences, USAC will not accept the new information submitted on appeal.

USAC will not accept new information on appeal if it is apparent that the documentation submitted is not the original documentation and was instead, created in response to a USAC request during the appeal review.

USAC also may not accept new information on appeal if it is clear that the applicant was not working with USAC in good faith. For example, if the applicant refused to provide the documentation during the original review of the application or did not respond to USAC inquiries, USAC may not accept the new information submitted on appeal.

Finally, it is important to understand that USAC can grant an appeal assuming no other issues are identified during the appeal review that would lead to a denial. If, on appeal, the basis for a funding denial is successfully refuted, USAC must examine all remaining aspects of the funding request to ensure that all program rules were met. If another reason for denial is not appealed or the appellant does not present a successful argument to USAC's original decision, the appeal will be denied. All funding request denial reasons must be overcome on appeal for USAC to fund the Funding Request Number (FRN).

---

<sup>11</sup> See *In re Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Mechanism Order*, 21 FCC Rcd 5316, 5326-27, ¶23 (2006) ("*Bishop Perry Order*").

<sup>12</sup> See *In re Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202, 9212, ¶29 (2003) ("*Schools and Libraries Second Order*").

## 2. ESPA Comment

In its comments, SECA recommended that absent any demonstration of fraud and in the spirit of the Commission's decision in the *Bishop Perry Order*, USAC should accept any new information during the appeal process that would cure original mistakes.<sup>13</sup> ESPA fully supports SECA's comments in this regard.<sup>14</sup>

In addition, USAC should post a specified time period within which it will decide appeals relating to the E-Rate Program. USAC does so for appeals relating to the Rural Health Care Program, promising to "review and respond in writing within 45 days of the appeal."<sup>15</sup> Lengthy delays in resolving appeals only serve to unjustifiably deprive applicants of funding where the appeals are successful and to add further complexity and cost to the future application process when appeal results are unknown for long periods of time.

With respect to the comprehensiveness of USAC actions, the Administrative Procedures provide that USAC may deny funding based on a reason that is then successfully subject to appeal, only to have the funding denied for another reason on remand when USAC "must examine all remaining aspects of the funding request to ensure that all program rules were met."<sup>16</sup> However, this procedure is inconsistent with USAC's express representation on its web site that "starting with FY 2007, USAC reviews the entire application and includes every denial

---

<sup>13</sup> SECA Comments, p. 2.

<sup>14</sup> ESPA positively notes the recent Commission action remanding an appeal to USAC for action where the Commission determined that information provided on appeal would resolve the basis for denial. *See Letter, from Dana R. Shaffer, Chief, Wireline Competition Bureau to Mel Blackwell, Vice President Schools and Libraries Division, USAC*, 23 FCC Red 3964 (2008).

<sup>15</sup> Rural Health Care appeal instructions are available at <http://www.usac.org/rhc/about/filing-appeals.aspx> ("USAC's RHCD management will review all letters of appeal and respond in writing within 45 days of receipt of the appeal. The response will either grant the appeal or will explain why the appeal was not granted.").

<sup>16</sup> Administrative Procedures, p. 7.

reason in the FCDL comment field” so an appeal may be lodged on all reasons for denial.<sup>17</sup> The Administrative Procedures must be updated in this regard.

Although USAC does not specifically address its appeal procedures related to post commitment appeals, such as invoice denial or FCC Form 486 denials, this is an area that requires greater transparency and more defined procedures. For example, USAC does not provide any clear process or procedure for an applicant or service provider to follow when it either denies an invoice or short pays an invoice during the invoice review process. USAC does not issue any formal notification of such denial to either the applicant or service provider when it conducts a post commitment review of the invoices for eligibility.

ESPA submits that this second level post commitment review is unfair, burdensome, and inefficient. The denial reasons provided during the invoice review process are cryptic and often require multiple levels of follow-up calls to USAC for clarification. If USAC denies funding of an approved application for any reason, including during the invoice review process, the rules should require USAC to issue a formal notification to all affected parties clearly stating the reason for the denial so that all interested parties may exercise their right to appeal. ESPA encourages the FCC to provide guidance to and instruct USAC to issue a formal notification letter for any denials made during the invoice review process that outlines the rights of the party to appeal.

Finally and most importantly, if a right to appeal is to be at all meaningful, the appellant must have the right to obtain the relevant administrative record that USAC contends supports the denial of the funding support. USAC should not be permitted to hide behind general assertions of Freedom of Information Act (“FOIA”) exemptions and law enforcement implications as a basis

---

<sup>17</sup> See <http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=1113>.

for denying access to any and all portions of the record. This is especially valid when funding support denial letters contain cryptic references to “competitive bid” or other broad generic denial classifications.

The fact is that in ESPA’s experience, under the current application of the Administrative Procedures, USAC denies any request from the service provider for the administrative record. In essence, USAC is left to gather detailed information from applicants through Program Integrity Reviews, Selective Reviews, Special Compliance Reviews, and Pattern Analysis Reviews over a period of months or years before rendering a decision—only to deny the funding without providing any supporting documentation to the service provider to support USAC’s decision. In order for the service provider to assess whether it is appropriate to file an appeal, it is important to see the same record that the applicants have access to and the answers provided by the applicant. Instead, USAC’s current position is not to provide this information and recommends to the service provider that they gather the information on their own from their customers. This process is unfair and discriminatory vis-à-vis the service providers as well as applicants who have been subject to pattern analysis reviews. Often USAC instructs the applicants in the review process not to consult with the service providers, placing an even more onerous burden on the service providers to obtain this information. Such a process is fundamentally unfair and makes the Commission’s rule affording a right to appeal a wholly hollow right.

This issue is equally applicable to USAC Internal Audits and audits conducted by third parties such as KPMG. If USAC conducts a beneficiary audit and the audit notes material findings that result in Commitment Adjustments or Reimbursement of Erroneously Disbursed Funds against both parties, USAC should make the audit findings and auditors’ worksheets available to the service provider upon request without forcing the service provider to file a FOIA

request with the Commission. Under such circumstances, the service provider, as an interested and aggrieved party, is entitled to the underlying documents to assess whether an appeal is appropriate. ESPA recommends that USAC make the same record available to all applicants as it does to the Commission when an appeal is filed. If USAC or the Commission is concerned about certain information being released in the public domain, then the Commission can require that USAC release a public record and a confidential record. ESPA recognizes that this may place an additional burden on USAC, but public interest dictates that an aggrieved party has the right to access the supporting documentation that resulted in a denial of funding. This is in keeping with the fundamental tenets of due process and notions of fairness. Every government agency is held to this standard; it should be no different for USAC.<sup>18</sup>

**B. Commitment Adjustments and Recovery of Improperly Disbursed Funds Including the *De Minimis* Standard**

1. Administrative Procedures (p. 10)

**USAC does not seek recovery of funds when the cost of seeking repayment is greater than the aggregated repayment amount.**

2. ESPA Comment

The Administrative Procedures should formally acknowledge that USAC generally does not seek recovery of funds for mere procedural violations. This standard was set forth in the Commission's *Fifth Report and Order* regarding commitment adjustments and should be reflected in the Administrative Procedures.<sup>19</sup>

---

<sup>18</sup> Openness Promotes Effectiveness in our National Government Act of 2007, § 6, Pub. L. No. 110-175, 121 Stat. 2524 (2007) ("Congress should regularly review Section 52 of Title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the 'need to know' but upon the fundamental 'right to know'.")

<sup>19</sup> *Fifth Report and Order*, ¶¶19, 80.

The Commission's *Fourth Report and Order*<sup>20</sup> directed USAC to make a determination as to whether the applicant or service provider or both parties should be held liable for a commitment adjustment. The Administrative Procedures should include guidelines that USAC uses in reaching these decisions giving more transparency to what otherwise might be viewed as a mere arbitrary decision.

Furthermore, often USAC simply assesses both the applicant and the service provider 100% of the adjustment liability, thereby in essence seeking to recover 200% of the adjustment. The Administrative Procedures should not permit such an attempt at double recovery, but require USAC to allocate responsibility or in any case, seek to recover no more than 100% of the adjustment amount.

With respect to the *De Minimis* Standard, ESPA agrees with SECA's comment that it appears that USAC has set an unreasonably low level for what constitutes "*de minimis*." The Congress intended that the E-Rate Program be administered in an efficient, cost effective, and competitively neutral fashion. In addition to the recent appeal involving a \$330 adjustment cited by SECA, ESPA is aware that USAC has recently issued commitment adjustments in the \$100-\$200 range. To remedy this situation, the Commission should require that clear *de minimis* threshold requirements are posted on USAC's web site as well as to identify all denials issued under the threshold set by the Commission. This is inconsistent with the Congressional goals. ESPA concurs with SECA's proposed threshold of \$2,500.

---

<sup>20</sup> *In re Federal-State Joint Board on Universal Service, Changes to the Board of Directors for the National Exchange Carrier Association, Inc., Schools and Libraries Universal Service Support Mechanism, Order On Reconsideration and Fourth Report and Order*, 19 FCC Rcd 15252 (2004) ("*Fourth Report and Order*").

C. **Invoicing: Equipment Delivery and Invoice Deadlines**

1. **Administrative Procedures (pp.19, 23)**

a. **Equipment Delivery**

**Equipment generally must be delivered within the funding year with some exceptions. The exceptions for delivery of service within the funding year are: delivery of service must be within the allowable number of days of contract expiration date; certain components of Priority 1 services may be pre-installed prior to the funding year and then reimbursed during the funding year; and certain mobilization services will be reimbursed prior to service delivery if contractual recovery mechanisms are in place at the time of the FCC Form 471 filing.**

b. **Invoice Deadlines**

**FCC Form 472 and FCC Form 474 must be received within 120 days of the last date of service, or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later. Disbursements are not made in response to forms received after that date, unless an extension is appropriate.**

2. **ESPA Comment**

ESPA concurs with SECA that the Administrative Procedure requirement regarding equipment delivery fails to reflect the automatic extension (nor the possibilities of additional extensions) in the case of non-recurring services.<sup>21</sup> This prospect should be included.

More fundamentally, with respect to recurring services, the current requirements for delivery of services within the Funding Year for which the support is granted, when coupled with delays in funding decisions and reversal of denials on appeal provide a competitive advantage to service providers who are able to “front” such services, without receiving payment for the discounted portion, pending receipt of funding. ESPA members unable to provide such service “advances,” but who receive funding decisions 9-10 months into the Funding Year are able to

---

<sup>21</sup> SECA Comments, p. 4.

provide minimal service to their schools before the ability to invoice is cut off by the end of the Funding Year. More significantly, ESPA members and applicants who successfully convince USAC that initial funding denials are in error, sometimes years after the close of the Funding Year to which the appeal relates, are left with a pyrrhic victory in the case where they cannot invoice for the funded service unless it was provided, without payment of the discounted portion, during the Funding Year for which the support originally was sought. Such a system wholly undermines appeal rights and clearly discriminates in favor of service providers of sufficient size and financial wherewithal to fund the discounted portion of the services pending USAC action. While ESPA recognizes that rectifying this imbalance may require the Commission itself to make a change in its rules, it is a fundamentally unfair scenario that has directly affected applicants and ESPA members.

ESPA also provides comments on Invoicing Procedures that were not included in USAC's submission to the Commission related to SLD invoice reviews by USAC prior to disbursement. Currently, as a result of unclear and unpublished invoice procedures and rules, there is a lack of due process, consistency, and transparency related to the processing of invoices. ESPA does not take issue with USAC's obligation to review the applications and guard the funds against waste, fraud, and abuse. Rather, ESPA takes issue with the lack of procedural and policy definitions for waste and abuse.

Current USAC invoicing procedures require the service provider to provide copies of the applicants' cancelled checks as well as service certifications from the applicant. First, service providers should not be required to provide USAC with an applicant's cancelled check. If USAC seeks copies of cancelled checks, which in and of itself is onerous and unnecessary in light of its service certification requirement, then USAC should seek the cancelled check from the applicant.

ESPA submits, however, that this procedural requirement is not supported by published Commission regulation, guidance or policy and that it is improper for USAC to require service providers to provide cancelled checks that belong to the applicants during the invoice review process. Not only is such a requirement fundamentally unfair, it also creates a major cash flow issue, because the service provider is required to ask the applicant to provide the “cancelled check,” which can take 30 to 60 days, then provide this to USAC, and then wait an additional 30 for USAC to review and additional 10-30 days for payment.

**D. Invoice Deadline Extensions**

1. Administrative Procedures (p.25)

**USAC grants requests for extensions of time in which to invoice USAC under the circumstances listed below:**

- **Authorized service provider changes;**
- **Authorized service substitutions;**
- **USAC did not provide timely notice to the applicant and/or service provider. For example, the service provider's FCC Form 486 Notification Letter is returned to SLD USAC as undeliverable;**
- **USAC made an error that resulted in the invoice being received into its data systems late. For example, USAC made an error in the data entry of an invoice;**
- **USAC delays in data entering the form resulted in the invoice being late;**
- **Documentation requirements necessitated third party contact or certification;**
- **Natural or man-made disasters prevented timely filing of invoices;**
- **Need for Good Samaritan Billed Entity Applicant Reimbursement (BEAR) form; and**
- **Circumstances beyond the service provider's control.**

2. ESPA Comment

ESPA agrees with SECA's suggested additions to circumstances in which USAC grants requests for extensions of time to invoice to include: (a) applicant or service provider receiving notice of a \$0.00 funded BEAR and (b) circumstances beyond the applicant's control.<sup>22</sup> In

---

<sup>22</sup> SECA Comments, p. 5.

addition, however, ESPA suggests that it would be in the interest of finality for both USAC and E-Rate Program participants if the Administrative Procedures contained a clearer timeline when USAC will no longer process Invoice Deadline Extension Requests. In any case, the Administrative Procedures should contain a timeframe within which USAC must act on any such Request.

E. 15-Day Process

1. Administrative Procedures (p. 28)

**USAC's information request process for all types of reviews of submissions by applicants includes standards used by reviewers when they request information and deadlines for applicants and service providers to respond to those requests. For most requests, applicants or service providers are asked to respond to the request in fifteen days. The process was formerly the 7-Day Process and was revised to the 15-Day Process. Applicants or service providers are sent a reminder request at or about day seven informing them that the information was not received as of the date of the reminder. USAC will grant requests for reasonable extensions. If the deadline is still not met, or if the information that has been provided is incomplete, the reviewer will make a determination based on the information on hand. Prior to any funding request being denied or modified, the applicant is contacted by USAC and made aware of the impending denial or modification. This contact provides the applicant with the opportunity to either agree with the denial/modification or submit additional documentation or other details which may change USAC's funding decision. Special handling procedures exist for the summer months and for part of December, when applicants may be unavailable. During those times, reviewers must not only make live contact with the appropriate contact person but must also ask the contact if they are able to respond to the inquiry at that time, or if the question needs to be deferred.**

2. ESPA Comment

The 15-day concept should be extended. The Administrative Procedures should provide that in the event of a denial of funding, both the applicant and the service provider should be able to notify USAC of an error in its decision within 15 days of the date of the denial and to cure the

defect within that period. Until USAC notifies the applicant or service provider, as the case might be, whether USAC accepts or rejects the effort to cure the defect, the 60-day appeal period should be tolled. Such a process could help avoid unnecessary appeals and the expenditure of resources resolving the same. Furthermore USAC should make “live” contact anytime it imposes a deadline such as the 15-day deadline, not just during the summer months. Many schools, libraries and service providers have personnel changes, breakdowns in facsimile machines, and SPAM servers that filter USAC emails.

**F. Contract Extension Deadlines**

1. Administrative Procedures (p. 37)

**Contract extension based on the applicable deadline for implementation of non-recurring services.**

**USAC accepts applicant and service provider contract extensions based on the applicable deadline for implementation of non-recurring services as a result of the date of the Funding Commitment Decision Letter.**

**USAC accepts applicant and service provider extension of contracts based on the applicable deadline for implementation of non-recurring services as the result of extensions of the implementation deadline.**

2. ESPA Comment

ESPA recommends that a similar right to receive a contract extension should be permitted for recurring services when funding denials are appealed and the appeal is granted. Otherwise, unless the service provider has provided the services without receiving compensation for the discounted portion, the appeal right is meaningless and the funding support granted cannot be employed to provide recurring services provided outside the Funding Year for which the E-Rate Program support originally was sought. This is an unfair result, which provides a competitive advantage to applicants and service providers able to front the costs of service while awaiting actions on appeals.

**G. Cost- Effectiveness Review**

1. Administrative Procedures (p. 38)

**USAC reviews Funding Request Numbers (FRNs) to determine whether the applicant is in compliance with all applicable Commission rules and policy guidance with respect to cost-effective funding requests.**

2. ESPA Comment

ESPA concurs with SECA's comments that "[a]s implemented, USAC's cost-effectiveness procedures appear to go well beyond FCC rules and policy guidance."<sup>23</sup> As the Commission knows, it is not USAC's role to make rules or policy, particularly where the Commission has said, as SECA observes that its rules do not establish a bright line test.<sup>24</sup> ESPA further recommends that the Commission initiate a notice of proposed rulemaking on the cost-effectiveness issue. ESPA is concerned that currently the cost-effectiveness standards applied by USAC are arbitrary, discriminatory, unfair, and not competitively neutral.

Application of the standards by USAC also interferes with market competition and the Commission competitive bid requirements and state and local procurement rules. The Commission's rules require applicants and service providers to adhere to Commission competitive bid requirements as well as local and state procurement rules. In the wake of no clear policy and definition, USAC's cost effective review "second guesses" and imposes a new cost structure, analysis and price that were not part of the competitive bid process. It is inappropriate for USAC to set a floor or ceiling on the funding where the Commission rules are silent and USAC's definition has not undergone appropriate feasibility studies and economic and market analysis.

---

<sup>23</sup> SECA Comments, p. 6.

<sup>24</sup> *Id.*

Indeed, the Commission, by not providing a clearer definition, implicitly recognizes that the term “cost effective” is a serious conundrum. ESPA suggests that, at a minimum, USAC should be required to publish its review guidelines for cost effective reviews and provide greater clarity, transparency, and definition to be followed by the applicant and service provider community. A review of cost effective funding denials demonstrate that FY2004 was the first time that USAC began to conduct cost-effective reviews. Each consecutive year, USAC denies many more schools on the basis that the funding “has not been justified as cost effective as required by FCC rules.”<sup>25</sup> A glance of the cost effective funding denial analysis results also indicates that USAC appears to be targeting small rural schools, private schools, and charter schools for these reviews. ESPA encourages the Commission to establish a clear definition and guidelines as to the definition of cost effective to promote fairness, equity, and competitively neutral administration of the rules. Until such guidelines are established, the Commission should direct USAC to discontinue its cost effective reviews.

#### **H. FCC Form 470 Posting Requirements**

##### 1. Administrative Procedures (p. 46)

**Applicants may voluntarily extend a contract without posting a new FCC Form 470 if the FCC Form 470 or Request for Proposal (if applicable) that initiated the procurement process resulting in the contract indicated that the applicant sought to enter into a multi-year contract with extensions.**

##### 2. ESPA Comment

The FCC Form 470 currently permits an applicant to indicate that the applicant is seeking contracts either for a multi-year term and/or with voluntary extension provisions. If the applicant

---

<sup>25</sup> E-Rate Central Funding Denial Analysis available at <http://www.e-rate central.com>. For example, in FY2003 there were no funding requests denied based on cost effectiveness. Since then, however, the total funding denied based on cost effectiveness has increased significantly—FY2004: \$697,423.37; FY2005: \$5,200,699.58; FY2006 \$12,969,753.70; and FY2007: \$3,204,055.07.

selects both options, then the applicant's contract may reflect both. This Administrative Procedures should be amended to clarify that this right to extend without a new FCC Form 470 is applicable to FCC Forms 470 that specify (a) multi-year only contract, (b) one year with voluntary extensions contract, or (c) both.

**I. Generic FCC Form 470 Service Category Description**

1. Administrative Procedures (p. 48)

**USAC verifies that the service categories' description for which discounts are sought for each Funding Request Number (FRN) are not generic or overly broad to ensure that service providers can provide responsive bids to the applicant's request.**

2. ESPA Comment

ESPA recommends that the Administrative Procedures provide additional guidance on what level of detail service providers should employ so that their service descriptions are not deemed "generic or overly broad" by USAC.

**J. Letter of Agency or Consultant Agreement**

1. Administrative Procedures (p.50)

**The Letter of Agency (LOA) or Consultant Agreement authorizes the consultant to act on the behalf of the applicant. The LOA or Consultant Agreement must be for the current funding year, which was signed, and effective, prior to the filing of the FCC Form 470 or prior to when consulting services begin.**

2. ESPA Comment

ESPA concurs with SECA's observation that this Administrative Procedure is not supported by any FCC rule.<sup>26</sup> Again, it is not for USAC to be filling a vacuum by developing, in the guise of an Administrative Procedure, a substantive rule or policy.

With the increasing and more visible role that consultants are playing in the E-Rate Program, ESPA believes that the Commission should require consultants to have Consultant

---

<sup>26</sup> SECA Comments, p. 7.

Provider Identification Numbers (“CPIN”) to further ensure fair and open competition. In general, the Commission needs to establish clearer rules with respect to consultants, for example, does a conflict of interest exist when a consultant for an applicant is a consultant for a service provider or manufacturer of E-rate eligible products and the service provider’s SPIN or manufacturer’s products are featured on the applicant’s FCC Form 471? Does a conflict exist where a service provider has an interest in several businesses, one which provides E-rate eligible goods and services and another which provides E-rate consulting services as long as the consultant does not participate in the bid evaluation process? Does a conflict exist when a consultant bars the bids of service providers from being considered, because USAC has delayed or “frozen” all funding for that service provider--does such action arbitrarily taint the competitive bid process? Can a consultant provide services to both applicants and service providers? When a manufacturer and school share the same consultant, is the competitive bid process tainted when the manufacturer pays for E-rate training for the schools and its products are featured on the Form 471? Can a service provider be listed on a Form 471 when it also provided consulting services pertaining to other FRNs for which it did not submit a bid? Can consultants have preferred vendors lists? ESPA takes no position at this time with respect to the questions posed, but simply offers these questions to illustrate the need for a more formal notice of public rulemaking on this issue to assist the Commission with providing clearer guidance and regulation to USAC on the role and do’s and don’ts for consultants and greater clarity with respect to the competitive bid requirements.

**K. Long Term Contracts Review**

1. Administrative Procedures (p.51)

**USAC ensures that for applicants who have relied on long-term contracts in prior funding years, the terms of the contract are consistent with the price, dates and services within the contract.**

2. ESPA Comment

It is not clear to ESPA why USAC's Administrative Procedures would in this context be focusing on contract terms relating to pricing and services. The rationale for the Administrative Procedure should be more clearly articulated. If the purpose of the Administrative Procedure is to ensure that applicants enter into contract extensions consistent with the Commission's rules, then the Administrative Procedure should be entitled "Voluntary Extensions" and should refer only to dates.

L. Non-Compliant Auditee

1. Administrative Procedures (p. 54)

**Applicants and service providers who are determined to be non-compliant with FCC rules after undergoing a USAC audit are sent a letter informing them that they will not receive funding commitments for their pending and/or future funding requests until they have adequately addressed the audit findings. If the auditee fails to respond to the auditee letter within the time period provided, or fails to adequately address the findings, pending funding requests will be denied.**

2. ESPA Comment

ESPA respectfully submits that the Administrative Procedure of deploying across-the-board FRN freezes for pending and future applications in the face of a single audit result is not supported by the Commission's rules and represents another instance of USAC adopting a substantive policy on its own. In ESPA's experience this Administrative Procedure is applied without identifying the audit involved and without any prior opportunity of the service provider to address/redress the audit conclusions that are the basis for the freeze. Indeed, in ESPA's experience, USAC provides scant guidance on what USAC requirements the service provider needs to meet to "adequately address the findings." Furthermore, the Administrative Procedure is applied to service providers even when the audit made no finding against the service provider

(i.e., they are not the “auditee”), but rather against the applicant. Such a procedure, if supported by Commission rule, may have its place with respect to the auditee, but as currently administered there is little or no advance due process afforded the subject of the freeze. Moreover, once the service provider or applicant responds to the “auditee letter” there is absolutely no prescribed deadline for USAC to decide whether the response is adequate. As a result, the freeze may remain in effect for an indefinite period, thereby depriving other applicants and service providers, who had no involvement with the audit in question, from the opportunity to receive E-Rate support from their chosen service provider.

Moreover, each application year stands on its own, with a potentially new set of players based on the rules and the service providers. To deny or freeze FRNs across Funding Years for a violation found on a specific application or audit for a specific funding year is a draconian and excessive penalty. Again, ESPA respectfully submits that there is no Commission rule or policy that authorizes this sweeping authority to hold hostage an entire group of applications based on a single audit finding or assertion.

**M. Selective Review Information Request and Certification**

1. Administrative Procedures (p. 59)

**Billed entities undergoing a Selective Review complete a Selective Review Information Request (SRIR). The SRIR contains a series of questions about the billed entity’s technology plan, competitive bidding selection process and in addition requires the billed entity to demonstrate they have secured the necessary resources to make effective use of any discounted services they receive and that they have a reasonable expectation they will have the financial resources to pay their non-discounted share. The billed entity must complete a certification attesting to the validity of the information provided and that the individual who prepared the responses has the authority to complete the SRIR on behalf of the billed entity.**

## 2. ESPA Comment

ESPA recommends that a time period should be established in the Administrative Procedures for USAC to complete any Selective Review and provide a response as to any findings relevant to the funding decision. All Selective Reviews should be completed within the Funding Year for which E-Rate funding is sought. In addition, USAC posts a certification on its web site that is different from the PAIR and Special Compliance Review Certifications that it sends to the applicants.

### N. Pattern Analysis Information Request and Certification

#### 1. Administrative Procedures (p. 61)

**Certain entities are asked to respond to a Pattern Analysis Information Request (PAIR), which identifies information on the entity's documentation similar to information provided by other entities. The entities are asked to provide an explanation for the similarities. The entity must complete a certification attesting to the validity of the information provided and that the individual who prepared the responses has the authority to complete the PAIR on behalf the billed entity.**

#### 2. ESPA Comment

ESPA respectfully submits that the employment of PAIRs is not cost effective. While such Requests may identify patterns, those identified do not, in a majority of cases, rise to the level of competitive bidding violations. If the use of PAIRs is to be continued, ESPA notes that the PAIR certification should mirror the certification required in connection with the certification page of the SRIR that is currently posted on USAC's web site,<sup>27</sup> and not cite to civil and criminal penalties, unless such certification is first approved by the Commission and the Office of Management and Budget. To ESPA's knowledge, it has not been so approved. Finally, service providers should not be expressly named as subject to PAIRs and USAC should not bar

---

<sup>27</sup> Sample Selective Review Information Request Completion Certification available at [http://www.usag.org/\\_red/documents/s1/pdf/selective-reviews/certification.pdf](http://www.usag.org/_red/documents/s1/pdf/selective-reviews/certification.pdf); see Exhibit 1.

communications between applicants and their vendors as USAC currently does in PAIR letters. USAC has cited no Commission rule or policy that would support such a prohibition.

Furthermore, USAC uses a “new” certification for PAIRs and Special Compliance Reviews (“SCRIRs”).<sup>28</sup> USAC has not posted its procedures for PAIR Reviews or SCRIR reviews on its website, which it is required to do. The Certifications sent to applicants contain references to civil and criminal penalties, which are not referenced in the SRIR Certification posted on USAC’s website.<sup>29</sup> USAC has no statutory authority to require certifications under federal laws that have not been approved by the Commission or the Office of Management and Budget. USAC is an independent, not-for-profit company. As such, USAC or its contractors should not be allowed to create certifications that simply model federally approved certifications without following the proper procedures. The Commission should direct USAC to refrain from using these certifications until they have been noticed for public comment and been formally approved through the correct federal process.

---

<sup>28</sup> The certification states in full:

**PATTERN ANALYSIS CERTIFICATION**

I certify that I am authorized to make the representations set forth in the responses to the Pattern Analysis Information Request on behalf of [SCHOOL OR LIBRARY], the entity represented on and responding to the Pattern Analysis Information Request, and am the most knowledgeable person with regard to the information set forth therein. I certify that the responses and supporting documentation to the Pattern Analysis Information Request are true and correct to the best of my knowledge, information and belief. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I acknowledge that false statements can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_ day of \_\_\_\_\_, 2006 at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

<sup>29</sup> See Exhibit 1 for an example of a certification available on USAC’s website. See Exhibit 2 for the actual certifications sent to applicants.

**O. Service Provider or Consultant Authorized to Sign the FCC Form 471**

1. Administrative Procedures (p. 63)

**USAC reviews the FCC Form 471 to determine whether the service provider or consultant has prepared the FCC Form 471 and is authorized to complete and sign the form. This review ensures that the applicant is aware that services have been requested on their behalf by the service provider or consultant.**

2. ESPA Comment

ESPA concurs with SECA's comments on this issue. USAC should determine whether a consultant has been authorized to sign an applicant's FCC Form 471. ESPA is aware of no circumstances under which it is appropriate for a service provider to sign an applicant's FCC Form 471, although it notes that USAC encourages the service providers to assist the applicants post contract award with their FCC Form 471s and Item 21 attachments as well as with other Forms.<sup>30</sup> This portion of the Administrative Procedure should be deleted.<sup>31</sup>

**P. Tainted Forms 470**

1. Administrative Procedures (p. 70)

**When USAC determines that there is service provider contact information on a FCC Form 470 for a service provider that participated in the competitive bidding process initiated by that FCC Form 470, all Funding Request Numbers (FRNs) associated with that FCC Form 470 are denied.**

---

<sup>30</sup> In the *Caldwell Parish Order*, the Commission incorrectly stated that a service provider is not to assist an applicant with any FCC form that requires an applicant certification. *In re Requests for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Columbia, Louisiana*, Order, 23 FCC Rcd 2784 ¶16 (WCB 2008). This statement is in error and will cause confusion in the applicant and service provider community. It also may lead USAC to initiate a new level of review of service provider involvement in the FCC Form 471 phase which includes Item 21 attachments and is clearly contrary to 10 years of USAC training and guidance.

<sup>31</sup> SECA Comments, p. 9.

2. ESPA Comment

ESPA respectfully submits that this procedure does not take into account those situations in which the service provider may have consulted on a separate category of service, but not submitted any bid on that category.

**Q. Verification that Applicant Posted FCC Form 470 Seeking Category of Service For Which it Seeks Discounts on FCC Form 471.**

1. Administrative Procedures (p. 75)

**USAC verifies the service categories for which discounts are sought for each Funding Request Number (FRN) to ensure that on the FCC Form 470 associated with that FRN, the applicant indicated that it was seeking that type of service. The service categories specified on the FCC Form 470 and FCC Form 471 are: Telecommunications Services, Internet Access, Internal Connections, and beginning with Funding Year 2005, Basic Maintenance of Internal Connections.**

**If the applicant did not indicate that it was seeking the category of service on the associated FCC Form 470 for which it seeks discounts on the FCC Form 471, USAC denies the FRN.**

2. ESPA Comment

ESPA agrees with SECA's comments on this Administrative Procedure. A reasonable step to avoid potential confusion would be to ensure that all services are listed within the correct set of Priority classes in an applicant's Form 470.<sup>32</sup>

**IV. CONCLUSION**

ESPA appreciates the opportunity to submit these comments for the first time. The requirement for USAC to publish a summary of its Administrative Procedures annually is a sound one, but the Commission should seek formal comment thereon, as it does with the Eligible Services List. Since the Administrative Procedures are the processes, outside of those dictated in the Commission's rules, which USAC employs to process the thousands of applications it

---

<sup>32</sup> SECA Comments, p. 10

receives each year, transparency and oversight by the Commission of these procedures is critical to ensuring that the E-Rate Program is administered in accordance with the goals and objectives set by the Congress and the Commission. The Commission has the responsibility to closely assess these Administrative Procedures and ensure that they are fair, equitable, efficient, and evenhanded, while protecting against waste, fraud, and abuse.

Respectfully submitted,

**E-RATE SERVICE PROVIDERS ASSOCIATION**

By: /s/Cynthia B. Schultz  
Cynthia B. Schultz  
Paul C. Besozzi  
Patton Boggs LLP  
2550 M Street NW  
Washington, D.C. 20037  
(202) 457-6000

Dated: April 18, 2008

Its Counsel.

**CERTIFICATE OF SERVICE**

I, Carly T. Didden, certify on this 18<sup>th</sup> day of April, 2008, a copy of the foregoing  
“Comments of the E-Rate Service Providers Association on the Administrative Procedures  
Applicable to the Schools and Libraries Program Submitted by the Universal Service  
Administrative Company” has been served via electronic mail or first class mail, postage pre-  
paid, to the following:

Ian Dillner  
Senior Legal Advisor to Chairman Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Ian.Dillner@fcc.gov](mailto:Ian.Dillner@fcc.gov)

Dana Shaffer, Bureau Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Dana.Shaffer@fcc.gov](mailto:Dana.Shaffer@fcc.gov)

Marcus Maher  
Legal Counsel to the Bureau Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Marcus.Maher@fcc.gov](mailto:Marcus.Maher@fcc.gov)

Jeremy Marcus  
Division Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Jeremy.Marcus@fcc.gov](mailto:Jeremy.Marcus@fcc.gov)

Gina Spade  
Assistant Division Chief  
Telecommunications Access Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Gina.Spade@fcc.gov](mailto:Gina.Spade@fcc.gov)

James Bachtell  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[James.Bachtell@fcc.gov](mailto:James.Bachtell@fcc.gov)

Regina Brown  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
[Regina.Brown@fcc.gov](mailto:Regina.Brown@fcc.gov)

/s/ Carly T. Didden  
Carly T. Didden

# **Exhibit 1**

### Selective Review Information Request Completion Certification

Complete and return the enclosed Certification to the Schools and Libraries Division (SLD). If the applicant's authorized representative completed the information in this document, please *attach a copy of the letter of agency or other agreement* between the applicant and consultant authorizing them to act on the school or library's behalf. For the purposes of this form, in the Employer's Name field, a consultant should enter the name of his or her consulting firm. Please note that if an authorized representative signs this form, a signer of school or library official is also required in the space provided below.

SECTION 1: AUTHORIZED SIGNER INFORMATION		
Name of Authorized Signer	Title	
Email Address	Telephone Office:	
Authorized Signer's Employer's Name		
Employer's Street Address	State	Zip Code
SECTION 2: APPLICANT INFORMATION		
Billed Entity Name	Billed Entity Number	
Funding Year 2007 Forms 471 Application Numbers:		
SECTION 3: CERTIFICATION STATEMENTS		
<ul style="list-style-type: none"> <li>I certify that I prepared the responses in this document on behalf of the above named entity.</li> <li>I certify that despite any budget deficits, fund-raising effort shortfalls, or other uncertainties we expect to be able to finance this budget.</li> </ul>		
Authorized Signer's Signature	Date	
Authorized School or Library Official's Signature	Date	
Title of Authorized School or Library Official		

The FCC's Fifth Report and Order (FCC 04-190) released on August 13, 2004, sets out document retention requirements for program participants. Failure to comply with these requirements will put your funding at risk.

## **Exhibit 2**

I certify that I am authorized to make the representations set forth in the responses to the Pattern Analysis Information Request on behalf of <enter entity name>, the entity represented on and responding to the Pattern Analysis Information Request, and am the most knowledgeable person with regard to the information set forth therein. I certify that the responses and supporting documentation to the Pattern Analysis Information Request are true and correct to the best of my knowledge, information and belief. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I acknowledge that false statements can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_ day of \_\_\_\_\_, 2006 at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Signature		Date
Print Name	<u>Title</u>	
Employer		
Telephone Number	Fax Number	
Email Address		
Address		

## SPECIAL COMPLIANCE REVIEW CERTIFICATION

I certify that I am authorized to make the representations set forth in the responses to the Special Compliance Review inquiry on behalf of \_\_\_\_\_ the entity represented on and responding to the Special Compliance Review inquiry, and am the most knowledgeable person with regard to the information set forth therein. I certify that the responses and supporting documentation to the Special Compliance Review inquiry are true and correct to the best of my knowledge, information and belief. I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I acknowledge that false statements can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Signature		Date
Print Name	Title	
Employer		
Telephone Number	Fax Number	
Email Address		
Address		