

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

In the Matter of:

Comprehensive Review of the Universal Service
Fund Management, Administration, and Oversight

WC Docket No. 05-195

Comments of
On-Tech Consulting, Inc.
concerning
Notice of Inquiry, September 12, 2008

Introduction

On-Tech Consulting, Inc. (On-Tech), a technology consulting firm based in Red Bank, New Jersey, assists over 100 schools and libraries in navigating the E-Rate process. In addition to the firm's significant experience working with the E-Rate program, Dan Riordan, President of On-Tech, is both an experienced network engineer and a former purchasing officer for the U.S. Government.

Comments

On-Tech welcomes the opportunity to make several suggestions to strengthen the administration of the program and improve the application process.

Strengthening Administration

1. **No 90% for Priority Two:** The maximum discount for Priority Two spending should be 75%. Discounts for Priority Two should be determined using the matrix at left. Note that there is no separate column for rural areas, since the cost of Priority Two services is not higher in rural areas.

The E-Rate discounts should reduce budget constraints on technology purchases, but a 90% discount on equipment effectively removes budget constraints, encouraging waste, fraud and abuse. Almost all the debarments in the program involved of equipment purchases made with 90% discounts. Without any budget constraints, directors of technology have no incentive to restrain their spending, while business administrators and superintendents who would normally provide some restraint see the potential to receive a large amount of funding with almost no expenditure, and approve purchases too easily.

NSLP free or reduced	Discount
Less than 1%	20%
1% to 19.5%	40%
19.5% to 34.5%	50%
34.5% to 49.5%	60%
49.5% to 74.5%	70%
Over 74.5%	75%

Lowering the discount would allow funding to reach more applicants. The total pre-discount amount for Priority Two requests would drop as formerly 90% are again mildly restrained by the budget necessity of a 25% share of the purchase price. In addition, the lowered discount would lower the E-Rate share by 16%, furthering lowering the demand by the applicants currently at 90%.

2. **Simplify the rules:** The most important change that the Commission could implement is to place an emphasis on simplifying the rules. Most of the improper payments identified in the IPIA audits were the result of applicants and/or service providers not understanding the rules. Unless the program rules are simplified, there seems little chance that improper payments can be reduced below the 2.5% threshold required by IPIA. Some of the specific rules and processes which should be eliminated are included in the comments below.
3. **Put all the rules in one place:** The first step in simplifying the rules should be collecting the rules. All the programs rules should be published in a single document every year, and open for comment at least twice in any five-year period. A single rule book would have several advantages:
 - a. Applicants would need to refer to only one document, instead of the current combination of Web sites, FCC rulings, training slide decks, etc.
 - b. All rules would be approved by the FCC, helping to avoid situations like the “two-signature/two-date” rule, where USAC thought the FCC had created a rule requiring two signatures and two dates in order for a contract to be valid, when in fact no such rule existed.
 - c. In the process of compiling, contradictory rules would be identified and eliminated.
 - d. The immense size of such a document would provide further incentive to reduce the number of rules in the program.

- e. The increased clarity of the rules would simplify administration of the program.
 - f. Auditors could be certain what ruleset applies to the funding year they are auditing.
 - g. In deciding appeals, the Commission would have a clear set of rules to apply to an application.
4. **Publish the program rules:** The rules and procedures of the E-Rate program should be publicly available. Currently, over 700 pages of rules and procedures are kept secret, meaning that most of the information concerning the processing of applications is not available to the public servants applying for funding on behalf of government entities. This level of secrecy is the biggest contributor to the unusually high level of fear among applicants. Keeping the rules secret does not prevent waste, fraud and abuse, but does catch many innocent applicants who fall afoul of a rule which they cannot know.
 5. **Leave competitive bidding to the states:** The FCC's competitive bidding rules do not result in lower prices or greater cost-effectiveness. Instead, the rules result in higher prices for applicants by removing flexibility, and has lead to situations where FCC rules conflict with state law, forcing applicants to forego E-Rate funding in order to comply with the law.
 6. **Technology plan requirements should change:** Many of the improper payments found in IPIA audits were the result of differences in applicants' and auditors' understanding of tech plan requirements. The FCC should take steps to ensure that applicants, tech plan approvers, USAC and auditors all have the same understanding of what constitutes a good tech plan.
 - a. An online technology plan tool should be available to all applicants. USAC should develop an automated tool, approved by the FCC, that will ensure all the tech plan requirements are met. Use of the tool should be optional.
 - b. The FCC should review existing online tech plan tools which have been approved by state E-Rate coordinators to ensure that all tech plan requirements are met.
 - c. In the event that a Certified Technology Plan Approver has approved a technology plan, auditors should not review that technology plan for program compliance.
 7. **Document retention:** The FCC should ensure that auditors do not request any documents not specifically mentioned in the Fifth Report and Order or subsequent orders. Audits should not result in collections due to a lack of documentation if the applicants were not told to retain that specific documentation.
 8. **Maintain the permanent administrator:** Until the rules are complete and public, consistency in the administrator will remain important. Once all rules and procedures are published and available in a single document, it may no longer be necessary to have a permanent administrator to oversee the contractors performing application review, audits, and other tasks.
 9. **Requests for guidance should be made publicly and answered publicly:** Requests for guidance on E-Rate rules from any party to the FCC should be publicly available as part of the proceeding in Docket 02-6. FCC responses should also be publicly available. This will prevent duplicative requests, and ensure that all stakeholders have the same information. In particular, allowing the public to see USAC requests for clarification will allow applicants to learn rules as they are being made.
 10. **Not possible to comment on internal controls:** The Commission requested comment on the program's internal controls. Unfortunately, it is not possible for program stakeholders to comment on ways to improve the programs internal controls, since those internal controls are kept entirely secret from stakeholders.

11. **USAC should be divested from NECA:** As USAC has suggested, USAC should not be owned by NECA, but should be a separate non-profit corporation, controlled by its board. The ownership of the program administrator by an association representing telecommunications providers creates the perception that telecommunications providers can influence the administration of the program.

Improving the application procedure:

12. **Abolish the Form 470 for public schools and libraries:** Public schools and libraries are already subject to proven state procurement laws to ensure that purchases are cost-effective. As mentioned above, the E-Rate bidding requirements result in higher prices by laying contradictory FCC rules on top of stringent state law. Public schools and libraries should be required only to follow state purchasing law. Private schools should be required to post the 470 and get at least three quotes, except in cases where three service providers are not available.

13. **Normalize the Form 470:** If the Form 470 is not abolished, it should be improved to make it more effective in creating competition. At present, it is very difficult for service providers to search data from the Form 470, because there is no standardization of data. To the extent possible, the form should create standard items with required information.

For example, Item 7, Telecommunications Services, should have separate lines for Local Telephone Service, Long Distance Telephone Service and Wireless Telephone Service, where applicants are required to list the number of lines desired, and several lines for Digital Transmission service, where clients are required to enter the number of connections and the bandwidth desired. Such standardization of elements would allow service providers to effectively search 470s.

14. **Stop requiring contracts before filing the 471:** Applicants should be allowed to create funding requests based on a service provider quote, rather than requiring a contract. For most applicants, it is illegal to sign a contract in February for service starting in June; the budget for the following year has not been approved. Requiring these illegal contracts results in higher prices, as applicants are forced to lock in prices well before service starts, and prices for telecommunications, Internet and Internal Connections generally decrease over time.

Many contracts have to be changed, especially in Internal Connections, where, due to delays in funding approval, installations often begin 18 months after the contract is signed. When the equipment list is changed, there is no competition, since the service provider has already been selected, so there is no incentive for the service provider to offer a low price.

Contracts do not prevent waste, fraud or abuse. Most of the debarments in the program involve funding requests for which a contract was signed.

15. **Eliminate the Form 486 deadline:** Applicants should be allowed to file the Form 486 at any time, as long as it is filed before the first invoice. However, USAC should continue the practice of notifying applicants who have not filed within 120 days of receipt of the FCDL.
16. **Give applicants a second chance on the BEAR:** The Form 472 should be handled like the 471 and 486: if applicants miss the deadline, they should be notified by USAC and given another 15 days to file the BEAR.

17. **Set the Priority Two denial threshold before opening the filing window:** Uncertainty about the denial threshold for Internal Connections and Basic Maintenance makes planning very difficult for applicants, and forces applicants to resubmit the same funding request in the following funding year because frequently the decision about funding is not made before the start of the next application cycle. This happens so frequently that a checkbox was added to the Form 471 allowing applicants to indicate if an FRN was submitted contingent on the funding of an FRN from the previous year.

Applicants with several schools at a 90% discount, but other schools at 80%, are forced to make decisions about which locations to include in Block 4. By including only 90% schools, they can be almost certain of funding. By adding some 80% schools until the total discount is 88% or 89%, they can cover more schools, and keep a good chance of receiving funding. If they add all the 80% schools, the total discount might drop to 83%, which seems unlikely to get funded, although people with enough time to read USAC's quarterly reports would see that there is a record amount of rollover funding available already for 2009-2010, so maybe it's the year that funding will reach 80%, except that the Priority Two demand from 90% schools rose 50% last year, possibly because more applicants were only including their 90% schools in their Priority Two funding requests, and fewer applications are being denied as USAC and the FCC become more tolerant of applicant error, so we can expect a record amount of funding to go to 90% applicants. What will the denial threshold be when the record rollover meets the record demand? At the same time, applicants must consider the 2-in-5 Rule consequences of these Block 4 manipulations.

There are simply too many factors to be considered, and the current system generates too much extra work for applicants and the program administrator.

The FCC should set the denial threshold at 90% for the 2009-2010 funding year before the window opens. Rollover funds should be added to 2009-2010 only as necessary to fund 90% requests. Excess rollover funds should be held for 2010-2011. Using demand projections and the amount of unused funding available in October 2009, the FCC should set a denial threshold for 2010-2011. If demand is higher than expected, rollover funds accumulated after October 2009 can be used to fund 2010-2011 applications down to the set denial threshold.

This delay in funding is especially troubling for Basic Maintenance, which must be funded at the start of the funding year. If the denial threshold for all Priority Two requests cannot be set before the start of the funding year, at least the denial threshold for Basic Maintenance should be set.

18. **Discard the "Two-in-Five Rule":** The rule which forbids any location from receiving Priority Two funding more than twice in any five year period should be rescinded.

The rule has been completely ineffective. In Funding Year 2003, the year in which the 2-in-5 rule was announced, the denial threshold was 70%. Since then, it has not gotten below 80%, despite increasing rollovers in funding.

The rule creates waste. Because of the 2-in-5 Rule, applicants are buying all the equipment they might need for a location in the next three years. As a result, they are buying equipment this year which could have been bought more cheaply next year or the year after. Frequently, the end of that three-year period is beyond the scope of the applicant's technology plan. It is

common in the IT community outside of the E-Rate to use replacement cycles of 4 years for servers, 5 years for data switches, and 8 years for a phone system. Because of the 2-in-5 year rule, applicants are forced to shorten the life cycles to 3 years, 3 years and 6 years, respectively. The net effect is a 33% increase in spending on servers and phone systems and a 66% increase in spending on data switches.

The rule is unfair for small applicants. Charter schools, which typically have only one location, are especially hard hit by this rule, since they cannot use funding for some locations one year, then other locations the next. Also, their budgets are stretched very thin, so they do not necessarily have enough funding to pay their 10% share for all their technology needs in one year.

19. **End the 30% rule:** The 30% rule does not prevent willful waste, fraud or abuse. It punishes applicants that made an honest mistake. The rule does not create administrative efficiency as it was originally intended; it creates administrative inefficiency. In order to implement the 30% rule, USAC must: 1) determine the cost of the ineligible items; 2) determine the percentage of ineligible cost; then 3a) if the percentage of ineligible items is greater than 30%, reduce the FRN to \$0.00, or 3b) if the percentage of ineligible items is less than 30%, reduce the FRN by the cost of the ineligible items. Without the 30% Rule, USAC would: 1) determine the cost of the ineligible items; and 2) reduce the FRN by the cost of the ineligible items.

Respectfully submitted by:



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