



In re Schools and Libraries :
Universal Service Mechanism :
 :
Funds for Learning Petition for : CC Docket No. 02-6
Clarification Regarding the :
Definition of “Consultant” and :
Confidentiality of Consultant :
Information Required by New :
FCC E-rate Forms 470 and :
471 :

Initial Comments of State E-rate Coordinators’ Alliance

The State E-rate Coordinators’ Alliance (SECA) supports the conceptual framework of requiring consultants to register with USAC. But to effectively implement this requirement, SECA strongly encourages the Wireline Competition Bureau to address the important nuanced operational details raised by Funds for Learning (“FFL”), and as amplified in these Comments, prior to “going live” with this requirement.¹

¹ Time is of the essence for these matters to be addressed, as the new FCC Form 470 and 471 applications will be implemented as of the January 11, 2011 form 471 filing window start date. The Bureau has delegated authority to address this matter, as noted in the recent Clarification Order, DA 10-2355 released December 15, 2010 at ¶11, as well as the 1997 Third Report and Order in CC Docket No. 96-45 (FCC 97-380 Corrected Version) released October 14, 1997 at ¶6, which states: “To the extent clarification of our rules are necessary, however, we delegate to the Chief, Common Carrier Bureau [now the Wireline Competition Bureau] the authority to issue orders interpreting our rules as necessary to ensure that support for services provided to schools and libraries and rural health care providers operate to further our universal service goals.”

Definition of Consultants

The most critically important question that needs to be answered is how “consultant” is defined. FFL makes a compelling point that there is no definition provided in the Form 470 and 471 instructions. Individuals who are not employees of an applicant and who accept a fee for filing E-rate forms from the applicant should definitely be considered consultants and required to obtain a consultant registration number and provide that number on the applicant’s form 470 and 471 applications. Are these same individuals who may be on contract with an applicant organization such as a state department of education or a regional educational service agency to assist applicants (including the submission of forms), be considered consultants when they act in this capacity? Are State E-rate coordinators (either employees or contractors) required to provide a consultant registration number if they assist an applicant with filing or reviewing a form 470 or form 471 prior to submission? SECA is especially concerned about obtaining clarification on what if any of the members’ activities constitutes serving as a consultant, and subjects them to the consultant registration number requirement and disclosing the CRN on a form 470 or form 471 application.

SECA does not believe that its members’ services to applicants that are provided without direct fee to the applicant constitute the provision of consultant services and should not invoke the CRN registration requirement. Services that are provided to an applicant for a fee may be considered consultant services.

Minimum Qualifications of E-rate Consultants

SECA urges the FCC to consider whether there should be some minimum standard or requirement for a consultant to obtain a CRN, such as requiring the consultant to certify that they are knowledgeable of and will comply with E-rate requirements. Perhaps a basic E-rate knowledge test should be administered as a

prerequisite to the CRN, similar to requiring people to have a basic knowledge of traffic laws prior to issuing a driver's permit.

As a prerequisite for service providers participating in the program, they are required to annually sign the Form 473, Annual Service Provider Certification Form that requires them to certify that their service provider invoice forms (Forms 474) are in compliance with E-rate invoicing rules. Service providers must also complete a FCC Form 498 in order to obtain a service provider identification number. A similar certification process should be established for obtaining and maintaining a CRN, where the FCC could impose rule adherence certifications **on all consultants**.

Consultant Registration Number Database

SECA agrees with Funds for Learning that the issue of consultant credentials will be greatly exacerbated if the FCC allows USAC to publicize CRNs. We see no benefit and numerous detriments associated with making this information public. Applicants should be able to obtain CRNs from their consultants, and the FCC/USAC can and should require consultants to disclose this information to their clients. Consequently, applicants should have no need to consult the data base. In contrast, much harm can come from a public CRN data base. Misleading advertising from unethical consultants that promotes their credentials by pointing to their inclusion in the CRN data base inevitably would flourish.² Further, misuse of the information to analyze the funding success (or failure) of consultants based on their CRN would similarly be encouraged. Indeed, applicants that may find themselves in E-rate hot water and in need of a scrupulous, capable consultant to assist them in resolving their E-rate problems may find consultants to be reluctant to provide assistance for fear of being publicly associated with

² It is commonplace for vendors that are new to the E-rate program to advertise that since they have obtained a SPIN, they are somehow officially "certified" or "qualified" to provide E-rate services to applicants, even though there is no pre-qualification process associated with registering for a SPIN. This kind of behavior should be discouraged and prohibited of consultants.

a troubled applicant, or for fear of somehow associating their other clients with this troubled client and causing E-rate review problems and delays for their other clients. It is a common practice, for example, that when a whistleblower submits a charge against a vendor or applicant, USAC will cast a very wide net and place a hold on all potentially affected funding requests. The CRN public data base may encourage ill founded and unethical whistleblower complaints to try to undermine the success of other consultants.

In addition, the publication of the CRN data base needlessly will disclose confidential information such as the consultant's customer list and will serve no public policy. Such an effort will have a chilling effect, and will simply encourage unscrupulous consultants to not disclose their CRN on forms 470 and 471 applications while penalizing scrupulous consultants that comply with the requirement.

Summary

For these reasons, SECA respectfully requests that the definition of consultant be clarified; the consultant registration number information be withheld from public view on forms 470 and form 471; and, any CRN data base be maintained as private and not for public release.

Respectfully submitted,

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