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

In the Matter of:	)	
	)	
Schools and Libraries Universal Service	)	GN Docket No.14-25
Support Mechanism	)	
	)	

**COMMENTS ON THE REPORT ON FCC PROCESS REFORM  
(DA 14-199)**

The State E-Rate Coordinators’ Alliance (“SECA”) submits these Comments in response to the FCC’s Public Notice released February 14, 2014 (designated DA 14-199) seeking comment on the Report on FCC Process Reform. These Comments address those recommendations included in the Report most directly related to E-rate issues including:

- FCC and USAC appeals
- Use of an E-rate stakeholder body
- Transparency and due process

*FCC and USAC Appeals:*

The one Report recommendation dealing directly with USAC, and hence with E-rate, is **Recommendation 5.39: Parties Aggrieved by a USAC Decision Must Seek Review from USAC before Seeking Review from the FCC.**

SECA agrees that appeals of USAC decisions — and particularly E-rate decisions — to the FCC pose a bureaucratic and administrative challenge to the efficient operation of the program. Although the FCC has improved its appeals process and reduced its backlog, we believe there are more than 500 E-rate appeals still pending. Some appeals seek review of funding denials, while others seek review of efforts to recover funds through a commitment adjustment letter. These appeals are a problem, not only for FCC staff, who could be better employed on other pressing E-rate issues, but for the E-rate appellants who are awaiting — in some cases for over extended periods — for decisions affecting their E-rate funding.

Unless basic changes are made in the appeal decision-making process, however, a requirement to make all appeals go first to USAC does little other than to shift the workload. This is because USAC lacks authority to address and resolve certain issues raised on appeal. Indeed, if many such appeals would ultimately end up at the FCC anyway, total USAC/FCC workload would increase. As a practical matter, State E-Rate Coordinators have worked hard — and, we believe, largely successfully — to educate applicants as to which types of appeals to address first to USAC or first to the FCC.

If this recommendation is to be adopted, SECA believes that it must go hand-in-hand with procedural changes conveying additional authority to USAC to waive certain E-rate rules consistent with clearly defined precedent which would otherwise require FCC appeals.

To some degree, the FCC has already moved in this direction by, for example, giving USAC the authority to issue warning letters and extend the deadline for filing Form 486s and Item 21 Attachments.<sup>1</sup>

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<sup>1</sup> One FCC initiative, designed to reduce the need for appeals on late-filed Form 471s, does not appear to be working well and may, in fact, be counter-productive. In recent years, a week or two after the last day to submit a valid Form 470 for the upcoming funding year, USAC has mailed or e-mailed over 25,000 “Form 470 but No Form 471” letters to applicants who had filed Form 470s, but who had not yet filed Form 471s, reminding them of the upcoming application filing deadline. Unless read carefully and understood, these letters tend to generate a sense of panic among applicants that they were about to miss — or perhaps had already missed — a critical deadline. Many applicants receiving these notices could not yet properly file their Form 471s, even if they wanted to, because their Form 470s had not yet been posted for the required 28 days. SECA believes that this notification process, as implemented by USAC, is unduly confusing and is a misinterpretation of the FCC’s instructions and intent.

SECA believes that expanding such warn-and-extend procedures and/or appeal rule-waiving authority granted to USAC would greatly reduce the need for appeals and/or lower the number of appeals submitted to the FCC. Based on recent appeals granted by the FCC consistent with precedent, for example, the FCC might consider:

- Instructing USAC to issue a formal warning, with an extended deadline, for providing additional time to respond to PIA requests for further information.
- Giving USAC the authority to waive the Form 471 window deadline for applications submitted within 14 days of close of the filing window.
- Giving USAC the authority to waive the last date to receive service deadline.
- Giving USAC the authority to waive the Form 486 filing deadline for timely filed appeals submitted within the 60-day deadline and for which the applicant provided a satisfactory explanation, consistent with precedent, for the basis of the waiver request.

For appeals which do go to the FCC, SECA agrees with the suggestion in the broader ***Recommendation 1.12: Streamline Management Review***, “to resolve low-dollar appeals and those that are consistent with precedent with fewer layers of review.” Although we recognize that large-dollar appeals to large applicants may be as relatively important as small-dollar appeals are to smaller applicants, SECA believes that more expeditious treatment of smaller appeals would benefit all applicants by helping to clear out the queue of pending appeals.

*Use of an E-Rate Stakeholder Body:*

SECA and other E-rate groups have long suggested that USAC and/or the FCC make greater use of applicant and service provider advisory groups to bring real world context to E-rate procedural and policymaking decisions. In E-rate, this was last done over ten years ago when USAC, with the backing of the FCC, convened the fourteen-person Task Force on the Prevention of Waste, Fraud, and Abuse. SECA recommends that the FCC establish a permanent E-Rate Policy and Procedural Review Task Force to serve as an ongoing resource to both USAC and the FCC.

This suggestion is fully consistent with **Recommendation 3.1: Consider Expanding Use of Multi-Stakeholder Mechanisms**<sup>2</sup> “to try and help inform policy.” Once established, an E-rate task force would also be positioned to participate in the implementation of related Report recommendations, including:

- **Recommendation 3.3: Consider whether a “Negotiated Rulemaking” Process could be Useful to Narrow Issues and Develop Proposed Rules for Commission Consideration.**
- **Recommendation 3.4: Consider Additional Mediation and/or other Dispute Resolution Techniques to Narrow Issues in Controversy and Find Solutions.**
- **Recommendation 3.5: Increase Access to External Technical Experts.**

*Transparency and Due Process:*

SECA is in full agreement with **Recommendation 2.23: Make Data More Accessible and Transparent to the Public** as well as with:

- **Recommendation 1.21: Increase Tracking Transparency of Pending Items** including “developing a detailed inventory of pending matters, and, over time, making that inventory public.”
- **Recommendation 5.3: Consider Notifying Investigation Subjects of Closure.** In this case, SECA would encourage the FCC to expand this recommendation to consider notifying subjects of ongoing non-criminal investigations, and providing a formal process for dispute resolution.

The lack of transparency in E-rate with regard to long-pending applicant issues has long been a problem in E-rate. In August 2011, SECA filed an *ex parte* white paper with the Commission entitled “Black Holes and COMADs: Issues and Recommendations.” “Consistent with principles of openness and transparency in government,” expressed throughout the Report on FCC Process Reform, SECA encourages the FCC to revisit and consider its 2011 filing (attached).

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<sup>2</sup> Including **Recommendation 3.1.1: Identify Independent Multi-Stakeholder Bodies with Relevance to the Commission’s Work** and **Recommendation 3.1.2: Evaluate Suitability and Feasibility of Conducting Multi-Stakeholder Pilot Program(s) to Narrow Issues in an Ongoing Proceeding.**

*Other Areas of Interest:*

SECA would also like to briefly cite three other recommendations in the report that, if implemented, would benefit the E-rate community. In particular:

- **Recommendation 2.34: Automate Publication Notice.** SECA agrees that it is important, but often difficult, to track the publication of FCC's orders in the *Federal Register*. If the FCC develops a publication information report, we encourage the FCC to adopt the recommendation to make the report "publicly available."
- **Recommendation 4.25: Improve Web Site Search Functionality.** SECA agrees with the Report's authors that users of the redesigned FCC website — particularly those whom we might designate experienced or expert FCC users — "have expressed frustration with certain aspects of the new website's functionality, especially its search and navigation functions." E-rate users find it especially difficult to research FCC rules and/or precedents stretched over multiple E-rate reports and orders and/or embodied in many appeal decisions. An improved, Google-like, search mechanism is critically needed. At a minimum, until the search capability is improved, the transition.fcc.gov website should be maintained.
- **Recommendation 4.4: Publicize and Expand FCC Wiki.** As expressed in this recommendation, publicizing the FCC Wiki appears to be limited to promoting its internal use. SECA believes that a Wiki-based facility would be a valuable tool for any party dealing with FCC issues. As the FCC Wiki is expanded, we encourage the FCC to consider making it publically available (with or without the capability to accept public contributions). Public access to the FCC Wiki would be step towards improving the search capability of the FCC website in general as expressed in Recommendation 4.25.

Respectfully Submitted by:

/s/ Gary Rawson

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March 4, 2014

Attachment: Copy of SECA's *ex parte* filing "Black Holes and COMADs: Issues and Recommendations" dated August 2011.



## **Black Holes and COMADS: Issues and Recommendations**

### **SECA White Paper – August 2011**

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

A National Broadband Plan For our Future, GN Docket No. 09-51

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#### **Introduction to the Issues:**

There can be no doubt that E-rate has been, and continues to be, a successful program. For most applicants and service providers, the E-rate process works well. The vast majority of applications are processed, reviewed, and funded in a timely and efficient manner. Services are provided on time and discount invoices are processed quickly.

In a minority of cases, however, the process is significantly more complex, frustrating, and ultimately self-defeating. SECA members are contacted by worried applicants and service providers and become immersed in these situations that often involve an application that has been pending for a very long time with little recent communication from USAC or has been subjected to a Commitment Adjustment situation (“COMAD”).

#### *Black Holes:*

“Black holes” refers to those situations in which no decisions are made on individual or related groups of E-rate applications and/or invoices for extended periods of time with little or no recent communication from SLD. The problems may be related to an applicant, vendor, or consultant, but it is often difficult to know. Affected applicants and service providers often receive no --- or even misleading --- information on the reasons for the delays when they initiate status inquiries with SLD. There are no established procedures to seek useful information, and more importantly, to address and resolve perceived problems. There also is no established time frame for SLD to address and resolve these situations. To our knowledge, there is no recordkeeping or reporting that USAC is required to undertake regarding these applications that are on hold. It is as if these applications and invoices simply disappear into a gigantic black hole.

Black hole consequences are severe and cause compounding problems the longer the situation languishes without resolution. Applicants caught in black holes may have to put off much needed system upgrades for an indeterminate period or, in many cases, may have to cancel existing services. Service providers may see their educational business grind to a halt leading to unpaid bills, layoffs, and/or bankruptcies.

The following table shows the number of applicants and service providers with at least one pending FRN for FY 2009 or earlier years.

"Black Hole" Applications (as of mid-May 2011)

<u>FY</u>	<u>Applicants</u>	<u>Service Providers</u>
1998	1	6
1999	8	2
2000	1	2
2001	5	3
2002	1	1
2003	4	2
2004	10	8
2005	4	5
2006	15	15
2007	41	30
2008	58	45
2009	169	79

Appendix A is a list of the worst examples of these applicant black holes. It lists 24 applicants that, having applied every year, have not had a single FRN funded since at least FY 2008. The “poster child” for this group is Atlanta Public Schools, which has not been funded since FY 2001. In aggregate, these applicants have over \$340 million in pending applications.<sup>1</sup>

Appendix B is a comparable list of 11 service providers that have not had a single E-rate customer funded since at least FY 2008.<sup>2</sup>

*COMADs:*

Financially, Commitment Adjustments (“COMADs”) may cause even greater hardships. Under current procedures, when previously awarded funding decisions are reversed after funds have actually been disbursed, the applicants or service providers deemed responsible for the errors or rule violations are required to return all such funds to USAC. The FCC occasionally may waive a rule otherwise leading to the recovery of funds. But if it does not, USAC seeks to recover 100% of the “improperly” disbursed funds, regardless of the severity or fault.

This means that no applicant or service provider can ever be certain that approved funding requests will not be reversed years later. While there may be practical time frame limitations related to record retention rules --- nominally 5 years --- the period of uncertainty is typically 6-7 years or more from the time the E-rate discounts were realized. The “all or nothing” consequences of COMAD recoveries are severe. School and library applicants, already subject to budgetary constraints, are in no position to repay funds received years before. From their

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<sup>1</sup> Total unfunded amount does not include FRNs canceled or denied for other reasons.

<sup>2</sup> A few of these service providers may not have been funded because of client black holes.

perspective, it would have been better to have never received E-rate funding. Service providers subject to repayment, particularly the smaller vendors, are typically in no better position.

Appendix C is a summary of current E-rate funds recovery activities initiated as the result of audits as per the FCC Office of Inspector General's semi-annual report to Congress for the period ending February 28, 2011. As indicated, there are over \$325 million in funds in various stages of recovery from audits alone. Including data on non-audit recovery efforts, not publicly available, could easily double this figure.

#### *USAC and FCC Constraints:*

Investigations involving allegations of criminal behavior require the involvement of law enforcement agencies such as the Department of Justice. In such situations, USAC and the FCC are bound by confidentiality restrictions and relinquish significant control on the timing and resolution of E-rate issues. While an investigation may be pending, however, all funding requests associated with the party being investigated – particularly when it is a service provider being investigated – may be stayed indefinitely and unfairly penalize innocent applicants as well as other service providers with which those applicants may have contracted.

USAC relies most heavily on pre-funding Form 471 application reviews and post-funding commitment invoice reviews to identify potential program violations. In addition to these standard reviews, USAC employs a set of more comprehensive reviews (Selective Reviews, Technology Plan Reviews, Special Compliance Reviews, etc.), all requiring extensive, time-consuming efforts by both USAC and applicants. Compliance and IPIA audits also may generate leads that must be pursued.

Additionally, USAC utilizes several other tools to screen for potential problems, most specifically involving competitive bidding issues. These include:

- Maintenance of a “whistleblower” or “Code 9” hot line to report potential waste, fraud or abuse. As described on the USAC web site (<http://www.universalservice.org/about/tools/whistleblower-hotline.aspx>), the reporting person may remain anonymous. The Code 9 process, however, is subject to abuse by former or present employees with an ax to grind and service provider competitors. Baseless calls are placed to undermine the competitive viability of service providers as it is common knowledge that placing a Code 9 call will result in a hold placed on all funding approvals and invoice payments of a company that is subject to a Code 9 accusation. Each Code 9 call apparently requires a follow up –regardless of source and/or credibility.
- Utilization of extensive data mining tools seeking potential matches between applicants and service providers on such measures as form content, IP addresses, names, addresses, and telephone numbers. Often, without further internal investigation by USAC, applicants are being asked to explain such “matches.”

The follow-up on applications, invoices, appeals, special requests, audits, Code 9 calls, special reviews, etc., is time consuming and resource intensive. USAC appears to be well staffed to efficiently handle the basic application and invoicing processes, but the handling of more

complex issues, particularly those involving potential rule violations, appears hampered by staffing, structural organization, and other resources – limitations that clearly aggravate the black hole problems.

## **Recommended Solutions**

While these situations may be unique and fact-intensive, SECA believes that there are key overarching Penalty and Investigative Determinants (which we designate “PAID”) under FCC and/or USAC control that can alleviate many of the current problems.

The following are suggested procedural and/or rule changes which we believe should be considered as a starting point for addressing these black hole and COMAD issues. The overall goal is to “Get PAID and Stay PAID.”

### *Bill of Rights:*

To set the right tone for an examination of these and other E-rate issues, SECA suggests that the FCC develop and adopt a “Bill of Rights” for the E-rate stakeholder community. At a minimum, the Bill of Rights should include:

1. The right to expect timely decisions on funding requests and changes, invoices, and appeals.
2. Absent active criminal proceedings, the right to informative status updates on pending decisions.
3. Absent the misrepresentation of information on an application or invoice, and on submissions to USAC reviewers, the right to consider funding decisions final.
4. The right to the due process resolution of outstanding issues.
5. The right to have all rules and procedures fully explained and available for review in a single, indexed, source.
6. Freedom from the retroactive application of new or revised rules, procedures, and/or interpretations.

### *Increased Transparency:*

SECA believes that the longer a decision is pending, the more status update information should be made available to the affected parties; tight timetables should be established for resolution, and USAC should be held accountable for achieving those time frames. Focusing on application review, for example, SECA recommends the following:

1. Within six months following the close of the Form 471 filing window: Additional levels of detail in the Application Status tool should be provided, e.g.
  - a. Normal Review
  - b. Selective Review
  - c. Policy Review

- d. Investigative Review
  - e. Pending Program Decision on Available Internal Connection Funding
2. Beyond the first year: Absent an active criminal investigation in which the party is the target, within 90 days of the stay of an application (defined as no activity on the continued processing of a Form 471 application or invoice), USAC should notify affected applicant/consultants/service providers (and state coordinators) of concerns that are holding up application decisions. If USAC requires additional applicant information, detailed requests for that information should be included in the notification. Within 90 days of receiving the requested information from the applicant and/or service provider addressing the issues, USAC should be in a position to issue a decision. This proposed procedure provides USAC with 180 days to resolve problems and issues that may have caused an application or invoice to be waylaid.

Even with increased procedural transparency, applicants, service providers, and consultants may find it difficult to determine, much less resolve, pending funding problems. In these cases, access to an independent ombudsman is critical. SECA believes that the role of the ombudsman must be strengthened by elevating the office's reporting level directly to the CEO of USAC and to the Chair of the Schools and Libraries Committee.

3. USAC should publish quarterly public reports of the metrics concerning all applications that fall within the above guidelines.

*“Under Review” Decisions:*

SECA believes that problematic FRNs, subject to further review, need to be isolated from broader application decisions. Too often, an entire application or groups of applications involving funding requests for different service providers are held up pending resolution of one FRN for one provider. USAC should institute time frames and procedures to confirm whether there is any systematic violation of program rules for the applicant or service provider with the FRN under investigation, if such confirmation is necessary. Absent any definitive determination of systematic applicant violations, the unaffected FRNs should be funded. USAC already has a procedure to handle situation like this by issuing an FCDL containing funding decisions on all unaffected FRNs, but deferring decisions on one or more other FRNs designated as “Under Review.” SECA urges USAC to expand the use of the “Under Review” process to eliminate funding delays on unaffected FRNs.

*Code 9 Procedures:*

SECA believes that USAC should streamline the handling of Code 9 reports, and at the same time discourage abusive use of the system, by developing and partially disclosing “triage” procedures. USAC should review its history of Code 9 calls by type of call and identify characteristics that have or have not traditionally led to rule violation/program findings. For example, do anonymous calls lead disproportionately to dead ends?

Rather than applying the same process to every Code 9 call, USAC should implement the following protections to insure that their limited resources are used efficiently to examine only legitimately grounded Whistleblower tips:

1. Track anonymous complaints, but investigate only repeated complaints.
2. Require that all callers identify themselves with the assurance that the caller's identity will remain confidential.
3. Require/ask callers reporting violations of local bidding rules to demonstrate local reporting of same.
4. Undertake investigation of violations of competitive bidding rules only when the accusation has been submitted to the applicable state or local reviewing authority.

Without revealing actual Code 9 review procedures, callers should be made to understand that their complaints will be prioritized by the quality of the information provided.

#### *Recovery of Funds Deadline:*

As indicated in the proposed Bill of Rights, some time limit should be set limiting the exposure of any applicant or service provider to subsequent COMADs. Currently the FCC rules prescribe that an audit must be initiated no later than five years from the last date of service for a particular FRN. Adverse audit findings may precipitate either a COMAD or Recovery of Improperly Disbursed Funds (RIDF) letter. Sometimes these follow-up letters are sent years after the completion of an audit. Applicants deserve to receive timely notice should USAC decide to pursue recovery of funds. USAC should be required to complete audits on a timely basis and issue any COMAD or RIDF notices by a deadline to be established by the FCC, such as five years from the last authorized disbursement date for any given FRN.

#### *Finality of USAC Funding Commitment Decisions Letters:*

The current system of post-funding commitment audits creates the risk that applicants and service providers may be compelled to refund support dollars that have already been disbursed whenever a program rule violation may be identified after the fact. The current procedure does not differentiate between technical infractions that may have been committed in good faith without any criminal or malevolent intent to defraud the program and intentional infractions that are worthy of criminal prosecution.

In situations where applicants and service providers acted in good faith and there was no criminal intent, stakeholders should be permitted to rely on the finality of USAC funding commitment decisions letters and not be subject to withholding of disbursements or recovery of funds already disbursed. This approach would represent a fundamental change in the way in which the program currently is administered but nevertheless would be entirely consistent with existing laws. More importantly, it would strike a fundamentally fair balance between the need to insure that program resources are not subject to waste, fraud or abuse, and the protection against unfair punishment of unknowing and unintentional program infractions.

**The FCC should not mandate recovery of funds disbursed in error for non-statutory violations that should have been identified during the pre-funding application process.**

The origin for the current process that requires the issuance of COMADs and RIDFs to stakeholders has two related roots: (1) estoppel principles are not applicable to the program; and (2) the FCC has no discretion to refrain from seeking post-funding commitment or post-disbursement recourse for any infraction that is viewed as a violation of the universal service statute. The FCC's rationale in both cases is flawed and needs to be reevaluated.

(1) Estoppel

Were estoppel to apply to funding commitment decisions letters, USAC would be precluded from issuing COMADs and RIDFs based on a later examination or review of its pre-application reviews. At the very least, applicants and service providers would be entitled to rely on the advice provided by USAC even if the advice is incorrect. The FCC has adopted the position that estoppel does not apply to USAC's actions, but the cases it cited do not lend support.

For example, in *Request for Review of the Decision of the Universal Service Administrator by Merced Union High School District, File Nos. SLD-8404; SLD-9605, DA 00-1997, Order released August 18, 2000*, the applicant referred to advice she received from SLD to bolster her appeal and justification for the manner in which discounts had been calculated. The FCC rejected the applicant's claim, stating:

We note that rules and policies are enforced, even where a party has received erroneous advice from a government employee, and the Commission is not estopped from enforcing its rules in a manner that is inconsistent with the advice provided by the employee, particularly when the relief requested would be contrary to an applicable statute or rule.<sup>11</sup>

*Id.* at ¶ 7, citing *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991).

The holding in the Merced Union High School District case incorrectly states that the applicant received erroneous advice from a government employee. SLD and USAC employees are *not* government employees. As USAC's web site states, "USAC is not a federal government agency or department or a government controlled corporation as that term is defined in Sections 9101-02 of Title 31 of the United States Code." <http://www.usac.org/about/tools/procurement/>. See also *Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, FCC 98-306 (Order released November 20, 1998). Further, the *Salvatoriello* case relies on the U.S. Supreme Court case of *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990) for the proposition that principles of estoppel do not apply to the federal government. SECA understands that federal employees and agencies cannot be bound by incorrect or inaccurate advice and it is the responsibility of the applicant and service provider to be knowledgeable about the statute and program regulations. Nevertheless, these cases do not support the same limitation being imposed on advice given by a private contractor.

USAC should be bound by its funding commitment decisions letters as well as informal advice provided to E-rate stakeholders in the absence of any fraud, waste or abuse. It is fundamentally unfair to seek rescission of those funding approvals due to an oversight or error committed by USAC during the initial review of a form 471 application for funding. As its agent, the FCC likewise should be bound by USAC's decisions to the extent permitted by law.

## (2) Limited Definition of Statutory Infractions that Compel RIDFs and COMADs

The Commission has grouped together violations of statute and rules implementing the statute and has insisted that any funds disbursed in violation of either category must be recouped, relying on the OPM v. Richmond Supreme Court case. In the 1999 COMAD Order, the FCC declared that funds disbursed **in violation of statute** must be recouped. *Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, FCC 99-291 (Order Released October 8, 1999). In the Commitment Adjustment Implementation Order, CC Docket Nos. 97-21, 96-45, FCC 00-350 (Order Released October 26, 2000), the Order did not explicitly address any recoupment of funds for rule violations, yet in a later Order, the Fifth Report and Order in CC Docket No. 02-6, FCC 04-290 (Order released August 13, 2004) the Commission characterized the COMAD Implementation Order as setting up a framework for recovering funds disbursed in violation of the statute **or implementing rules**. *Id.* at ¶ 16. The Commission's expansive view of the OPM v. Richmond case does not, however, mandate this result. This interpretation has cast such a wide net over any kind of program rule violation that the minutest unintentional oversight is subject to the same penalty as serious infractions that arise from intentional misdeeds.

Even the Commission has recognized that not all programmatic rule violations rise to the same legal import as statutory violations. Violations of rules that are not mandated by statute, such as technology plan rules do not compel recovery of disbursed funds and the FCC has discretion to waive its rules. *See, e.g., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, FCC 99-292 (Order Released October 8, 1999). However, in other instances, the FCC has directed USAC to seek recovery of funds for violations of other regulations that are not compelled by statute. *See also Schools and Libraries Program*, WC Docket No. 02-6, "Table C" Recovery Issues, DA 09-86 (January 16, 2009). Equipment transfer rules, a legally binding contract, and technology plan requirements are just three examples of the extreme position that the FCC adopted to compel recovery of funding for any program rule violation – even when the rule was not required by statute.

Not even the incorrect calculation of discounts should be considered a recoverable offense since the statute mentions discounts but does not prescribe a specific discount percentage or manner of calculation of discounts. When a discount is miscalculated and results in an otherwise higher discount, the funding priority rules are violated -- which the FCC already has recognized as an error that can be waived and does not mandate recovery of funds -- in the October 8, 1999 Order 99-292.

Because the statute specifies that the FCC must define universal service for purposes of the program, when funds are disbursed for ineligible services, then arguably, such infractions should

be subject to recoupment. But again, the FCC has the discretion to waive its regulations in this area since the statute does not contain an explicit definition of which services are eligible.

Since the statute contains a specific definition of eligible schools and libraries, violations of the statute should be recouped but other eligibility violations such as Priority 2 funding to NIFs that are not the network hub location should be waived generally (unless there is evidence of waste, fraud or abuse) because the rule is not required by statute.

*Gradations of Financial COMAD Penalties:*

SECA believes that the FCC should develop a middle ground on the imposition of financial COMAD penalties short of no penalty or full recovery of disbursed funds. SECA believes that such an approach would be consistent with the other federal and state procurement practices whereby multi-million or multi-billion dollar contracts, for example, are not unwound upon the findings of relatively minor competitive bidding rule violations. Such a policy would provide the FCC with additional flexibility, other than rule waivers, to deal with cases involving inherently unfair penalties for minor violations or possible processing errors or lapses by USAC.

If the FCC is not ready to institute such gradations now, SECA suggests that applicants and/or service providers, faced with a full recovery COMAD, be given the right to elect to have the penalty reviewed and adjusted by an independent third party such as an administrative law judge. Over time, the FCC might review the body of decisions made by the arbitrators and adopt a standard penalty structure.

Appendix A

**Applicant Black Holes: Pending funding from FY 2008 (or before)**

As of July 2011 (excluding FY 2011 and earlier FRN denials)

BEN	Service Provider	State	FY	Pending Amount	No. Years
8377	Ranch Hope For Boys Inc	NJ	2010	21,901.43	4
			2009	21,590.83	
			2008	432,566.51	
			2007	810,053.35	
			Total	1,286,112.12	
56605	Renaissance P.S.A.	MI	2010	8,160.00	3
			2009	3,127.48	
			2008	2,891.20	
			Total	14,178.68	
122392	New London Public Schools	CT	2010	3,189,681.48	4
			2009	106,272.00	
			2008	98,628.75	
			2007	193,908.66	
			Total	3,588,490.89	
123374	Wildwood School District	NJ	2010	91,919.88	4
			2009	136,500.80	
			2008	142,554.52	
			2007	110,800.92	
			Total	481,776.12	
123420	Atlantic City Bve-Admin	NJ	2010	2,014,077.81	4
			2009	708,647.33	
			2008	954,108.40	
			2007	997,933.57	
			Total	4,674,767.11	
126359	Prince George's County Schools	MD	2010	3,784,031.91	4
			2009	5,081,669.75	
			2008	5,121,383.33	
			2007	4,877,684.04	
			Total	18,864,769.03	
127115	Bamberg County School Dist 1	SC	2010	76,800.00	4
			2009	52,320.00	
			2008	52,320.00	
			2007	57,388.80	
			Total	238,828.80	
127319	Atlanta Public Schools	GA	2010	6,286,742.53	8
			2009	8,899,436.40	
			2008	2,915,090.19	
			2007	2,046,857.04	
			2006	7,315,366.43	
			2005	2,713,033.37	
			2004	13,196,435.21	
			2002	3,009,462.40	
			Total	46,382,423.57	
130961	Ecorse Public School District	MI	2010	55,862.10	4
			2009	106,714.80	
			2008	45,646.31	
			2007	72,783.12	
			Total	281,006.33	

137143	Kansas City School District	MO	2010	1,005,122.07	5
			2009	10,667,316.28	
			2008	13,386,057.56	
			2007	15,601,607.26	
			2006	332,563.35	
			Total	40,992,666.52	
139237	Tangipahoa Parish School Dist	LA	2010	3,191,800.48	3
			2009	1,297,315.42	
			2008	968,740.64	
			Total	5,457,856.54	
140542	Dallas Indep School District	TX	2010	49,285,131.43	5
			2009	52,007,706.78	
			2008	50,744,146.52	
			2007	5,936,497.20	
			2005	4,280,866.48	
			Total	162,254,348.41	
141639	Donna Indep School District	TX	2010	4,954,313.84	4
			2009	4,302,209.05	
			2008	3,476,908.13	
			2007	3,340,539.40	
			Total	16,073,970.42	
141949	Meadow Indep School District	TX	2010	53,961.23	3
			2009	54,204.23	
			2008	54,383.72	
			Total	162,549.18	
143120	Tucson Unif School District	AZ	2010	3,280,803.08	4
			2009	1,105,587.23	
			2008	4,939,012.44	
			2007	5,977,980.46	
			Total	15,303,383.21	
143164	Kayenta Unified School Dist 27	AZ	2010	2,171,283.82	4
			2009	1,922,036.93	
			2008	2,188,581.06	
			2007	3,707,484.38	
			Total	9,989,386.19	
144523	Klamath-Trinity Jt Un Sch Dist	CA	2010	320,280.41	3
			2009	445,933.37	
			2008	428,482.85	
			Total	1,194,696.63	
191163	World Communications Charter School	PA	2010	177,641.01	5
			2009	265,708.29	
			2008	264,124.91	
			2007	127,590.15	
			2004	170,020.07	
			Total	1,005,084.43	
208832	Liberty Traditional Charter	AZ	2010	87,113.03	3
			2009	51,451.20	
			2008	54,410.40	
			Total	192,974.63	
209999	Esperanza Academy	PA	2010	655,985.21	4
			2009	186,459.71	
			2008	524,987.40	
			2007	160,953.39	
			Total	1,528,385.71	

220623	Eugnio Maria De Hostos Charter School	PA	2010	451,909.09	5
			2009	274,290.44	
			2008	87,811.13	
			2007	85,098.46	
			2006	64,882.44	
	Total		963,991.56		
231309	Dallas County Schools	TX	2010	1,149,123.33	4
			2009	1,258,753.67	
			2008	1,480,512.25	
			2007	804,669.30	
			Total	4,693,058.55	
16035377	Aspira School District	IL	2010	1,465,704.21	3
			2009	1,925,193.78	
			2008	1,670,174.85	
			Total	5,061,072.84	
16044968	Departamento De Educacion De Carolin	PR	2010	189,962.86	3
			2009	81,819.72	
			2008	177,525.00	
			Total	449,307.58	
	Grand Total		\$ 341,135,085.05		

Appendix B

**Service Provider Black Holes: Pending funding from FY 2008 (or before)**

As of July 2011 (excluding FY 2011 and earlier FRN denials)

SPIN	Service Provider	FY	Pending Ammount	No. Years
143004346	Crystal Automation Systems (Casair) Inc.	2010	23,800.98	6
		2009	22,885.56	
		2008	34,871.56	
		2007	70,949.18	
		2006	420,443.43	
		2005	59,311.95	
	Total		632,262.66	
143005079	Comweb Technology Group, Inc.	2010	17,100.07	3
		2009	88,585.81	
		2007	26,302.64	
	Total		131,988.52	
143006994	Snip Link Llc	2010	139,141.30	5
		2009	82,082.40	
		2008	300,048.50	
		2007	575,470.17	
		2004	145,260.00	
	Total		1,242,002.37	
143015152	Netmedic Inc.	2010	295,991.71	3
		2009	1,013,986.73	
		2008	169,839.04	
	Total		1,479,817.48	
143017142	Empire Technologies, L.L.C.	2010	554,170.65	5
		2009	44,340.00	
		2008	211,589.01	
		2007	177,276.63	
		2006	50,856.55	
	Total		1,038,232.84	
143022229	Telcove Operations, Inc.	2010	25,380.00	4
		2009	36,180.00	
		2007	43,419.96	
		2006	42,421.80	
	Total		147,401.76	
143024914	Cms Internet Llc	2010	1,440.00	4
		2009	828.86	
		2008	120,651.01	
		2007	205,374.51	
	Total		328,294.38	
143025075	SBC Long Distance, Llc	2010	61,844.27	3
		2009	1,229.61	
		2008	7,073.11	
	Total		70,146.99	
143027629	Arizon Communications Experts Inc.	2010	30,098.36	3
		2009	19,001.48	
		2008	474,946.81	
	Total		524,046.65	

143030275	Edutex Consulting	2010	25,920.00	
		2009	25,920.00	
		2008	25,920.00	
		Total	77,760.00	3
143032054	Omnilink Corporation	2010	4,383,867.20	
		2009	5,317,836.72	
		2008	5,800,624.08	
		Total	15,502,328.00	3
Grand Total		\$	21,188,171.51	