

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

In the Matter of )  
 )  
Modernizing the E-rate ) WC Docket No. 13-184  
Program for Schools and Libraries )  
 )

**Comments of the E-Rate Management Professionals Association, Inc.**

The E-Rate Management Professionals Association, Inc. (E-mpa™) is a (501)(c)(6) trade association whose purpose is to promote excellence and ethics in E-rate professional management and consulting through certification, education and professional resources.

E-mpa™ serves as an advocate for the critical role served by E-rate management professionals and consultants. The organization strives to strengthen and support the E-rate program by acting as a self-governing body of E-rate management professionals and consultants. E-mpa™ provides assurance to stakeholders by maintaining the highest standards, developing and promoting best practices, and requiring ethical conduct for all members.

The members of our association provide E-Rate Program consultation and management services to E-Rate program participants. Our combined client list represents schools and libraries ranging from the small rural remote school district to very large urban school districts. Therefore, we have an excellent perspective of the current and future Broadband needs of our clients throughout the United States. We have access to the most recent and competitive marketplace pricing for E-Rate eligible services due to our review of our applicants' competitive bidding process. This knowledge positions our group to provide real time insight into the current, and more importantly, the future broadband needs of our clients.

We are pleased to provide the following comments to WC Docket 13-184. Consistent with the direction provided in paragraph 336, E-mpa™ is providing the table below as a summary of our comments as well as a link to our various responses.<sup>1</sup>

Issue or Question Raised	NPRM Reference	Link to Response / Page #	E-mpa™ Position/Recommendation
<i>How have schools and libraries incorporated dark fiber into their broadband deployment?</i>	Paragraph 70	<a href="#">Response 1</a> (Page 7)	It has helped increase competition in rural and/or rural remote areas.
<i>Should the FCC make the treatment of lit and dark fiber more consistent?</i>	Paragraph 71	<a href="#">Response 2</a> (Page 7)	E-mpa™ concurs with the proposal to provide Priority One Support for the modulating electronics necessary to light leased dark fiber.
<i>Should the FCC provide priority one support for special construction charges for leased dark fiber.</i>	Paragraph 72	<a href="#">Response 3</a> (Page 8)	E-mpa™ concurs with the proposal to provide priority one support for special construction charges, design, engineering cost, project management cost, digging trenches, and laying leased dark fiber.
<i>Should the FCC identify additional Funding to Support Broadband to Schools and Libraries.</i>	Paragraphs 163, 170, and 172	<a href="#">Response 4</a> (Page 8)	E-mpa™ supports the recommendations made by the International Society for Technology in Education (ISTE®) for an increase in the fund.
<i>Should the Commission measure compliance with its “lowest corresponding price” rule?</i>	Paragraph 39	<a href="#">Response 5</a> (Page 10)	E-mpa™ supports the Commission in measuring compliance with LCP.
<i>What is the least burdensome but effective method for determining whether the service provider is offering the LCP?</i>	Paragraph 209	<a href="#">Response 6</a> (Page 10)	E-mpa™ is opposed to requiring an applicant to report to USAC the fact that only one bid or no bids were received. E-mpa™ recommends that review of higher than average costs be directed not to the applicant but to the service provider who will be able to explain the pricing.
<i>The FCC seeks comment on the clarity of the LCP rule as requested by US Telecom and CTIA.</i>	Paragraph 210	<a href="#">Response 7</a> (Page 11)	E-mpa™ supports clarifying the scope and meaning of the LCP rule, but does <b>not</b> support the clarifications as laid out by US Telecom and CTIA.

<sup>1</sup> Since our members represent a wide range of applicants across the nation, our recommendations as submitted are based upon a majority consensus of the membership and do not necessarily reflect 100% agreement by all members of the Association and/or the applicants our members represent.

Issue or Question Raised	NPRM Reference	Link to Response / Page #	E-mpa™ Position/Recommendation
<i>The FCC proposes to amend section 54.511 to require service providers to certify their compliance with the lowest corresponding price rule.</i>	Paragraph 309	<a href="#">Response 8</a> (Page 12)	E-mpa™ supports adding service provider certifications on both FCC Form 473 and FCC Form 474 that LCP has been provided.
<i>The FCC seeks comment on ways to increase transparency throughout the application, commitment and disbursement processes.</i>	Paragraph 232	<a href="#">Response 9</a> (Page 13)	E-mpa™ supports clear deadlines for USAC and improving on-line reporting of application review status.
<i>The FCC seeks comment on ways to reduce the time it takes USAC to review applications.</i>	Paragraph 233	<a href="#">Response 10</a> (Page 15)	E-mpa™ proposes a number of specific procedural changes in “Streamlining the Administration of the E-Rate Program.”
<i>The FCC seeks comment on whether it should establish deadlines for USAC to issue funding decisions or complete its other processing tasks.</i>	Paragraph 234	<a href="#">Response 11</a> (Page 15)	E-mpa™ proposes that deadlines be established for USAC to issue funding decisions and to complete its other processing tasks.
<i>The FCC seeks comment on ways to expedite the application review process.</i>	Paragraph 235	<a href="#">Response 12</a> (Page 17)	E-mpa™ has provided a number of suggestions to streamline the Program Integrity Assurance (PIA) review process.
<i>Are there changes that should be put in place so that other unrelated funding requests are not held up pending the resolution of an issue involving another FRN?</i>	Paragraph 236	<a href="#">Response 13</a> (Page 18)	E-mpa™ agrees with SECA that measures should be implemented so that other unrelated funding requests are not held up pending the resolution of an issue involving another FRN.
<i>Should the FCC limit the number of opportunities applicants are given to respond to USAC’s requests for documents and clarification?</i>	Paragraph 237	<a href="#">Response 14</a> (Page 19)	E-mpa™ believes that the procedures in place today should remain as they are with additional extensions allowed for extenuating circumstances.
<i>Should the FCC allow multi-year funding commitments be allowed for multi-year contracts?</i>	Paragraph 239	<a href="#">Response 15</a> (Page 20)	Applicants with multi-year contracts should file an FCC Form 471 each year but, after the first year of the contract, it should not be necessary for them to file an Item 21 Attachment or go through the review process unless the amount applied for changes.
<i>The FCC seeks comment on a number of changes to our handling of multi-year contracts.</i>	Paragraph 240	<a href="#">Response 16</a> (Page 20)	Applicants with multi-year contracts should show their intent to re-apply each subsequent year on the FCC Form 471.

Issue or Question Raised	NPRM Reference	Link to Response / Page #	E-mpa™ Position/Recommendation
<i>The FCC proposes to allow E-rate applicants with multi-year contracts that are no more than three years in length (including any voluntary extensions) to file a single FCC Form 471. The FCC seeks comment on amending our rules to permit multi-year commitments in the E-rate program.</i>	Paragraphs 241 and 242	<a href="#">Response 17</a> (Page 20)	E-mpa™ agrees that multi-year approvals for multi-year contracts would be preferable but the implementation of a multi-year approval is problematic considering the changes in funding available each year as well as the changes in eligible services.
<i>The FCC proposes to modify its process to permit schools and libraries to receive disbursements directly from USAC</i>	Paragraph 259	<a href="#">Response 18</a> (Page 22)	E-mpa™ agrees with the FCC's proposal to permit schools and libraries who pay the full cost of the services under the BEAR process to receive disbursements directly from USAC.
<i>The FCC seeks comment on whether making direct payments to applicants under the BEAR process would simplify the E-rate disbursement process for applicants and service providers by removing a step in the process.</i>	Paragraphs 260 and 261	<a href="#">Response 19</a> (Page 22)	E-mpa™ agrees that permitting schools and libraries, paying the full cost of the services under the BEAR process, to receive disbursements directly from USAC would further streamline the administration of E-Rate.
<i>If the FCC moves the CIPA certifications to another form, would applicants using the BEAR process and seeking reimbursement directly need to submit an FCC Form 486?</i>	Paragraph 261	<a href="#">Response 20</a> (Page 22)	E-mpa™ does not recommend eliminating the FCC Form 486 for BEAR filings.
<i>The FCC seeks comment on whether the Communications Act creates any barriers to the payment of universal service funds directly to E-rate applicants.</i>	Paragraph 262	<a href="#">Response 21</a> (Page 24)	Although E-mpa™ makes no legal representation in this proceeding we affirm the commission's interpretation of section 254(h)(1)(B).
<i>The FCC asks whether there are additional improvements that could be made to the invoicing process or certifications that are required on the invoicing forms, FCC Form 472 and FCC Form 474.</i>	Paragraph 263	<a href="#">Response 22</a> (Page 24)	E-mpa™ does not recommend any changes to the current invoice review process.
<i>The FCC seeks comment on other changes Commission staff can implement to improve the appeals review process.</i>	Paragraph 269	<a href="#">Response 23</a> (Page 25)	The number of new appeals can be significantly decreased by clarifying and simplifying the E-rate processes, increasing productivity and transparency at USAC, and improving communications with applicants by USAC and the FCC.

Issue or Question Raised	NPRM Reference	Link to Response / Page #	E-mpa™ Position/Recommendation
<i>Clarification is sought on various topics relating to the Children's Internet Protection Act.</i>	Paragraphs 271-275	<a href="#">Response 24</a> (Page 26)	E-mpa™ believes that the CIPA rules should apply to any device connecting to an E-Rate supported network.
<i>The FCC proposes to extend the E-rate program document retention requirements from five to at least ten years.</i>	Paragraphs 295-297	<a href="#">Response 25</a> (Page 28)	It is the opinion of E-MPA™ a targeted extension of the record retention requirements is more appropriate than increasing the record keeping requirements to 10 years for all applicants.

## COMMENTS: MODERNIZING THE E-RATE PROGRAM FOR SCHOOLS AND LIBRARIES Released July 23, 2013

**E-MPA™ recommends leased fiber, leased dark fiber, and privately owned fiber networks to the main distribution frame within each school or library facility should be included on the eligible services list.**

**Wide Area Network (WAN) Connectivity** is generally provided via fiber in urban, suburban and rural areas. Schools generally procure this service from a local service provider for 100 Mbps, 1,000 Mbps, or 10,000 Mbps WAN connectivity from each school building/campus to a district network operations center. The district network operations center is generally located within the Main District Administration Building and/or the High School. Schools will generally sign a minimum of a five year contract for leased WAN service.

E-mpa™ believes that fiber connectivity for the provisioning of wide area network services is the most efficient and cost-effective way of providing wide area network services in most situations. Wide area network service is defined as the broadband service connecting schools and/or libraries to a centralized network operation center. Fiber connectivity provides for a relatively inexpensive and timely upgrade from 1 gigabit connections to 10 gigabit connections as the need for additional broadband connectivity continues to escalate.

The multi-year contract is used by the provider in order to spread out the costs of the initial build out and provide for affordable pricing. After the initial multi-year contract is complete, subsequent renewals with the original service provider are typically lower in cost since the initial build out has already been paid for. For example, a school district installed a fiber based Wide Area Network with an initial cost of \$33,286 per month for a quantity of 38 one gigabit fiber connections. At the conclusion of the original five year contract in the fall of 2012, the district conducted a competitive bidding process for this service. The original service provider quoted a price of \$12,727 per month for 38 one gigabit fiber circuits based upon a five year contract, or approximately \$335.00 per month per circuit. The next lowest bidder for this service was three times higher.

Alternatively, some school districts have elected to build their own private fiber networks. The funds for these district-owned fiber networks are provided by a variety of methods such as long-term technology bond issues as approved and paid for by the local taxpayers. The school districts that have elected to take this path have reduced the need for financial support from the Federal E-Rate Program. E-mpa™ encourages the FCC to consider any changes to the eligible services list that will allow for these districts to secure funding to build and/or maintain the fiber networks on an ongoing basis.

It is important to note that point-to-point microwave broadband services and/or Satellite

service will be the most cost efficient for broadband connections in those areas cost prohibitive to the deployment of fiber (e.g. – Rural, Rural Remote and/or mountainous areas).

Therefore, we conclude that all broadband technologies inclusive of fiber, point to point fixed wireless broadband, and Satellite should be included within the eligible services list to meet the needs of all potential recipients of the E-Rate Funding Program.

### **Paragraph by Paragraph Response – Leased Fiber, Dark Fiber, and Leased Fiber Services**

*70. Fiber deployment. In the Schools and Libraries Sixth Report and Order, subject to certain limitations, the Commission added dark fiber to the list of services eligible for E-rate support. We seek comment on how schools and libraries have incorporated dark fiber into their broadband deployment plans as the result of this change.*

### **E-MPA™ Comment/Recommendation**

This decision by the Commission has provided maximum flexibility for schools and libraries during the bidding process for wide area network services. This flexibility has allowed school districts and/or libraries to solicit pricing via the RFP process from multiple service providers. We believe the positive financial result of this decision is the reduction in cost from legacy service providers due to increased competition. The legacy service providers now recognize they must provide a competitive bid compared to previously being the “only option in town.” This decision has provided a positive impact on the ability of Rural and/or Rural Remote School Districts to implement Fiber Based Broadband Networks. Simply stated, the Legacy Service Providers do not commit sales and technical resources to Rural and/or Rural Remote School Districts, whereas Dark Fiber/Lit Fiber Service providers have identified the Rural/Rural Remote School districts as a prime target for Fiber Based Broadband Services. The end result of this decision has produced a reduction in broadband cost for E-Rate entities and the E-Rate Program.

*71. To further improve applicants’ flexibility in finding cost effective ways to deploy high capacity broadband, we propose to make our treatment of lit and dark fiber more consistent. The E-Rate program currently supports the recurring costs of leasing lit and dark fiber as priority one services. When a school or library leases lit fiber, the modulating electronics necessary to light that fiber are included in the recurring supported cost of the service and are therefore funded as part of the priority one service. By contrast, a school or library that leases dark fiber will not receive priority one support for the modulating electronics necessary to light the dark fiber. To eliminate this disparity, we propose to provide priority one support for the modulating electronics necessary to light leased dark fiber.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ concurs with the proposal to provide Priority One Support for the modulating electronics necessary to light leased dark fiber. Support should only be provided for a **single**

**edge device** at each school/library location. Support for the single edge device should only cover the initial cost of the device and/or basic maintenance of the device in the event an entity has already procured and paid for the device. The edge device should be limited to the smallest possible component that will light the fiber: either a media converter or GBIC, not an entire switch or router.

*72. Installation charges for lit and dark fiber are also treated somewhat differently under current rules. Currently, the E-rate program provides priority one support for the installation of lit or dark fiber up to the property line of eligible schools and libraries. It also supports all “special construction charges” for leased lit fiber, but does not support “special construction charges” for leased dark fiber beyond an entity’s property line. Special construction charges include design and engineering costs, project management costs, digging trenches and laying fiber. In order to maximize the options available for schools and libraries seeking to deploy fiber to their premises, we propose to provide priority one support for special construction charges for leased dark fiber, as we do for leased lit fiber.*

#### **E-MPA™ Comment/Recommendation**

E-mpa™ concurs with the proposal to provide priority one support for special construction charges, design, engineering cost, project management cost, digging trenches, and laying leased dark fiber. This decision will remove an additional cost burden on schools/libraries and accelerate the implementation of Broadband service for those entities that currently do not have a fiber based broadband network in place.

### **Lowering New Build Costs and Identifying Additional Funding to Support Broadband to Schools and Libraries**

*163. In this section, we seek comment on what additional steps the Commission should take to ensure that there are sufficient funds to meet the connectivity needs of students teaching staff, and libraries.*

*170. We also seek comment on how we can maintain the core requirements and procedures in the E-rate program if we closely coordinate support with other universal service programs. How could we implement some of the ideas while maintaining the framework of the existing competitive bidding requirements for the E-rate program?*

*172. Funding the proposed goals through E-rate. In this Notice, we seek comment on various approaches of refocusing or reprioritizing funds, or adjusting the support levels for certain services, as well as other proposals that will reduce costs while better targeting support to help schools and libraries get the connectivity they need. We seek comment on whether, in concert with these changes, enough funding will be saved or preserved to enable the E-rate program*

*to meet our proposed connectivity goals within the existing E-rate funding cap. Recent reforms to the other USF programs were achieved without having to increase the overall size of the USF. For example, the Commission established a budget for the Connect America Fund and a savings target for the Lifeline program. Also, the Commission recently reformed the Rural Health Care program to encourage consortium applications, increase eligibility in covered services and provide applicants more flexibility in renewing multi-year contracts. We ask commenters to identify the funding that could become available as a result of the reforms suggested in this NPRM and whether these reforms will result in sufficient cost savings to the E-rate program to meet proposed program goals.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ supports the Commission's goals of meeting the current and future connectivity and infrastructure needs of schools and libraries. It is E-mpa's™ position that the E-rate program has been underfunded for many years given the fact that (1) in Year 2013, there was more funding requested for Priority One services alone than funding was available until the FCC rolled over additional monies from previous years and (2) for ten plus years schools and libraries have requested Priority Two funding but have been denied because their discount rate was not high enough. While the original \$2.25 billion dollars was sufficient in the early years of the program, as more and more schools and libraries embraced the idea that they needed to improve their facilities to meet the ever increasing connectivity demands of their students, patrons, and staffs, it became apparent years ago that the existing E-rate funding cap could not stretch far enough to handle current, and certainly, not future needs of the program. In order to implement the ConnectED Initiative ([http://www.whitehouse.gov/sites/default/files/docs/connected\\_fact\\_sheet.pdf](http://www.whitehouse.gov/sites/default/files/docs/connected_fact_sheet.pdf)), significant funding will be needed to provide high bandwidth access for not only initial build out costs but also ongoing costs to support installed infrastructure.

As evidenced by the current demand for funding for telecommunications and Internet Access (Priority One funding) which already exceeds the existing funding cap plus rollover funds, the current funding cap does not provide sufficient funds for the necessary costs expected to meet the goals of the ConnectED initiative for high bandwidth access to schools and libraries of 100 Mbps per 1,000 students and subsequently 1000 Mbps per 1,000 students..

Therefore, E-mpa™ supports the recommendations made by the International Society for Technology in Education (ISTE®) (<https://www.iste.org/about-iste/advocacy/e-rate>) for an increase in the fund. While there may be some cost savings by changes as proposed in this NPRM, we encourage stakeholders to recognize the program is underfunded and encourage the FCC to continue to consider ways that funding for this valuable program can be increased.

## Clarification of Lowest Corresponding Price (LCP)

39. We also seek comment on whether the Commission should measure compliance with its “lowest corresponding price” rule as a measure of affordability to ensure that service providers are providing schools and libraries with the lowest corresponding price for E-rate supported services that a provider charges to a similarly situated non-residential customer.<sup>62</sup> The rule mandates that service providers cannot charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services, or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.

### E-MPA™ Comment/Recommendation

E-mpa™ supports the Commission in measuring compliance with LCP. E-mpa™ members have a unique advantage to see pricing over multiple applications and have been assisting applicants for years in attaining competitive pricing. However, applicants who do not have a professional consultant acting as an advocate may consistently pay non-LCP, not realizing pricing is inflated. Monitoring LCP is necessary to protect applicants and the fund. E-mpa™ does not support the measurement of LCP adding additional burden to applicants, but rather supports the obligation of service providers to provide the Commission with LCP compliance verification, as is proposed in section VI.D.3.c (paragraph 309) of the NPRM.

209. *Lowest Corresponding Price (LCP).* We also seek comment on the extent to which the LCP rule helps ensure that service providers charge cost-effective prices. In section II.B.2, we sought comment on using the LCP rule to measure progress towards our proposed goal of ensuring applicants have affordable access to broadband. The LCP rule requires service providers to charge the lowest price that a service provider charges to non-residential customers that are similarly situated to a particular E-rate applicant for similar services. We specifically seek comment on the role of the lowest corresponding price rule for competitive bidding. If an applicant receives only one bid or no bid for services should the applicant be required to report that fact to USAC? If an applicant receives only one bid or no bids, should USAC automatically engage in additional review of the application to determine whether the service provider has offered the lowest corresponding price? Or, should USAC only do additional review under those circumstances if the price for the service at issue is flagged as higher than similar services? If USAC should conduct further pre-commitment review for compliance with the LCP rule, what is the least burdensome but effective method for determining whether the service provider is offering the LCP?

### **E-MPA™ Comment/Recommendation**

E-mpa™ is opposed to requiring an applicant to report to USAC the fact that only one bid or no bids were received, as it places additional burden on the applicant and USAC. For example, many small and rural districts have only sole providers of service. We recommend the Commission continue with current guidelines of requiring applicants to memorialize the fact that only one bid or no bids were presented during the competitive bidding process. E-mpa™ does not support requiring applicants who have one bid or no bid to undergo additional review as the additional review requirement would place additional burden on the applicant and USAC, possibly delaying funding and thereby negatively impacting students.

We agree that USAC should continue with its current practice of additional review if the price for service at issue is flagged as higher than similar services. E-mpa™ recommends that review in this situation be directed not to the applicant but to the service provider who will be able to explain the pricing, including factors that affect cost of service (e.g. volume, mileage from facility, length of contract) and provide documentation of LCP or documentation that LCP is not compensatory. In addition, if determined by USAC that LCP is compensatory and was not offered, it is E-mpa™'s recommendation that the service provider be allowed to adjust pricing to LCP. Furthermore, if LCP cannot be offered by the current provider under review, it is recommended the applicant be allowed to switch providers without penalty via a SPIN change.

*210. We also seek comment on the clarity of the LCP rule. In 2010, US Telecom and CTIA (together Petitioners) petitioned the Commission to issue a declaratory ruling to clarify the scope and meaning of the Commission's LCP rule.<sup>269</sup> More specifically, Petitioners requested that the Commission clarify that: (1) the lowest corresponding price obligation applies only to competitive bids submitted by a provider in response to a Form 470; (2) the lowest corresponding price obligation is not a continuing obligation that entitles a school or library to constantly recalculate the lowest corresponding price during the term of a contract; (3) there are no specific procedures that a service provider must use to ensure compliance with the lowest corresponding price obligation; (4) in determining whether a service bundle complies with the lowest corresponding price obligation, discrete elements in such bundles need not be individually compared and priced; and (5) in a challenge regarding whether a provider's bid satisfies the lowest corresponding price obligation, the initial burden falls on the challenger (i.e., a school or library) to demonstrate a prima facie case that the bid is not the lowest corresponding price.<sup>270</sup> The Commission sought comment on that petition,<sup>271</sup> and we now invite commenters to refresh the record on whether it is necessary to clarify the scope and meaning of the LCP rule.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ supports clarifying the scope and meaning of the LCP rule. However, E-mpa™ does **not** support the clarifications as laid out by US Telecom and CTIA and offers the following

recommendations:

- 1) LCP obligation applies to all service providers who seek reimbursement from USF with or without response to a Form 470.
- 2) When under contract, applicants have the right to review pricing on an annual basis and request LCP if determined that lower pricing is now available. The service provider must respond to applicant's inquiry as to pricing, special promotions, etc. as it applies to similarly situated non-residential customers.
- 3) Service providers must certify compliance with LCP on FCC Forms 473 and 474. In addition, service providers must submit upon request to USAC and/or applicant, verification of LCP (as determined by the service providers' internal accounting systems). For example, if an applicant deems prices are high but is unsure about competitive cost of internet access, the service provider, upon request, will provide the applicant with the data used to determine LCP, including but not limited to prices charged to similarly situated non-residential customers; also, service providers will cooperate fully and in all respects with the applicant, USAC and any agency or organization administering the E-rate program to ensure the applicant receives the LCP to which it is entitled in connection with the provider's services and products.
- 4) Bundled pricing is acceptable for determination of LCP as long as pricing is compared to similar bundles with comparable elements and function.
- 5) It is the burden of the service provider to supply documentation of LCP upon request from USAC or the applicant. The service provider is responsible for ensuring LCP is provided. The applicant is not obligated to ask for LCP but must receive it. The applicant has no way of verifying whether it is receiving LCP or not, nor does it know which schools and libraries in its geographic area are serviced by a particular vendor and what price is being charged to similarly situated schools and libraries. For this burden to be placed on the applicant, as is suggested in the Petitioner's comments, is unrealistic and highly unreasonable and will place undue hardship on the applicant who has no ability or authority to obtain the service provider's protected pricing information..

*309. Lowest Corresponding Price Certification. We also propose to amend section 54.511 to require service providers to certify their compliance with the lowest corresponding price rule. The lowest corresponding price rule requires service providers to provide applicants with prices no higher than the lowest price that it charges to similarly-situated non-residential customer for similar services. Requiring such a certification will provide additional incentive for service providers to offer schools and libraries with competitive prices for supported E-rate services and hold service providers further accountable for complying with this rule. We seek comments on the benefits and burdens of such a requirement. Specifically, we seek comment on the following proposed amendment to section 54.511(b) of our rules:*

*(e) The service provider must certify on the FCC Form 473 and FCC Form 474 that it is charging schools, school districts, libraries, library consortia or consortia including any of these entities, the lowest corresponding price for supported services, unless the Commission, with respect to interstate services, or the state commission, with respect to intrastate prices, had found that the lowest corresponding prices is not compensatory.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ supports adding service provider certifications on both FCC Form 473 and FCC Form 474 that LCP has been provided.

#### **The benefits include:**

- 1) Assurance of LCP so applicants know that service providers are not charging schools and libraries more than non-residential customers who are similarly situated.
- 2) Applicants who may lack experience in the bidding and procurement process would be assured that the chosen service provider has offered competitive pricing.
- 3) Reduction of waste, fraud, and abuse of the fund as this could stretch the funds dollars so more students have access to better services
- 4) It demonstrates the Commission is serious about the LCP obligation and there will be consequences for noncompliance

#### **The burden includes:**

- 1) Operating on the assumption that service providers have already been offering LCP and have internal controls in place to ensure LCP, the burden would be ministerial as only the forms will need to be modified to include the LCP certification.

E-mpa™ supports the goal of maximizing funds while continuing positive collaboration of service providers and applicants - certification of LCP is one way to do this while imposing minimal additional burden. Adding LCP certification to FCC Form 473 and FCC Form 474 provides accountability for complying with this rule as the penalty for certification violations can be fine, forfeiture, imprisonment, and service provider liability under the False Claims Act. E-mpa™ acknowledges the value provided by service providers in fulfilling the purpose of the E-rate program. It is understood that service providers must charge compensatory pricing in order to stay in business; offering LCP to applicants makes continuing service possible and benefits all stakeholders.

For reference, see Appendix A: FCC Form 473 Certification.

### **Increasing the Transparency of USAC's Processes**

*232. We seek comment on ways to increase transparency throughout the application, commitment and disbursement processes, so that applicants have a better understanding of*

*the status of their funding requests. SECA suggests, among other things, that the longer a decision is pending, the more status update information should be made available on USAC's website to the affected parties. SECA therefore proposes that USAC should provide additional levels of detail in its "Application Status" tool on its website to provide applicants with a better understanding of where their application is in the review process. For example, SECA suggests additional designations, such as "Normal Review," "Selective Review," "Policy Review," "Investigative Review," and "Pending Program Decision on Available Internal Connection Funding." Additionally, in cases where USAC is waiting for an applicant submission, it could indicate as part of the application status that it is "awaiting applicant's response to USAC's request on [date]." We seek comment on SECA's proposal and other ways in which to increase transparency of the review process for applicants.*

### **E-MPA™ Comment/Recommendation**

We believe that the initiatives below will increase transparency of USAC's processes:

- Establish deadlines for USAC to issue funding decisions or complete its various processing tasks. We address this in detail in our comments for paragraph 234.
- Expand USAC's communications to applicants regarding application review status, **requiring** USAC to provide to the applicant within 7 days of applicant's request:
  - a. When an application has been in a status other than initial review for 30 days, explaining why the application remains in that status, what (if anything) the applicant can do to expedite clearance of that status, and when SLD plans to clear the application through the status.
  - b. When USAC has failed to meet a deadline funding decision, explaining why USAC has not met the funding decision deadline for the application, what specific steps USAC will take to complete its process, and when SLD plans to issue the funding decision for the application.

Similar responsive communications would be required for various other processing tasks, such as appeals, SPIN changes, service substitutions, invoice reviews, etc.

- Improve on-line reporting of application review status similar to the SECA proposal. This information would also be used by the Client Service Bureau in responding to applicant queries. The CSB would be empowered to escalate queries to USAC management for detailed explanations in cases where:
  - a. An application has been in a status other than initial review for 30 days or longer.
  - b. USAC has failed to meet a funding decision deadline or a processing task deadline. Please see our recommendations to paragraph 234 for in depth discussion of this issue.

## **Speeding Review of Applications, Commitment Decisions, and Funding Disbursement**

*233. We next seek comment on ways to reduce the time it takes USAC to review applications for E-rate support in order to more quickly release funding commitment decisions. Currently, applications can undergo a number of levels of review prior to release of funding commitment decisions. We note that, in a recent report, GAO recommended that the Commission undertake a risk assessment of the E-rate program. GAO noted that a risk assessment involving a critical examination of the program could help determine whether modifications to USAC's business practices and internal control structure are needed to appropriately address the risks identified and better align program resources to risks. In addition, applicants have found that USAC's review process can become time-consuming and can significantly delay funding commitment decisions, particularly for state networks and consortia that may file numerous funding requests per funding year. At the same time, the Commission has directed USAC to ensure that funding is disbursed to eligible recipients for eligible services. For all the suggestions below, given that we must balance administrative efficiency with protecting against waste, fraud, and abuse, we also seek comment on how we should ensure that streamlining the application and disbursement process does not then result in an increase in improper payments.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ proposes a number of specific procedural changes in “Streamlining the Administration of the E-Rate Program” in the subsequent paragraph responses. We recognize that some of these changes may be costly, either on a one-time basis (e.g.: system development and reprogramming) or by increasing recurring costs (e.g.: hiring additional reviewers, improved training for reviewers and managers). We urge the Commission and USAC to give thoughtful consideration to the benefits of these proposed changes in evaluating these additional costs.

*234. We seek comment on whether we should establish deadlines for USAC to issue funding decisions or complete its other processing tasks. We describe above the reporting requirements in which USAC must detail performance related to commitments, disbursements, and appeals.<sup>298</sup> If commenters support deadlines, what should those deadlines be? If so, how should we balance speeding the review with protecting against improper payments and waste, fraud and abuse? Commenters should specifically address how the deadlines might improve or harm the application and invoicing processes. What should happen if USAC cannot meet the established deadlines?*

### **E-MPA™ Comment/Recommendation**

We propose that deadlines be established for USAC to issue funding decisions and to complete its other processing tasks. In order to participate in the E-rate program, applicants are expected to engage in planning and budgeting actions that will reduce waste and increase

efficient use of Universal Service funds. This planning has to include planning for net spending on products and services and for the timing of that spending – cash flow.

Regardless of how well applicants plan, however, they are severely challenged by the increasingly unreliability of the various USAC processes, starting with the funding approval process and running through the various other processes.

Applicants are all too often subject to delays caused by deficient process design, poor management of processes, lack of accountability for timely completion of these processes, and absence of communication. To the applicant, the E-rate program can seem capricious and punitive, and certainly beyond the scope of reasonable planning processes to cope with.

E-mpa™ supports the establishment of well-defined deadlines combined with a free-flow of information regarding status of the review process to instill accountability for a timely and transparent funding decision process. Implementation of these steps will require an overhaul of both review processes and day-to-day management of these processes. Elsewhere in our recommendations we offer concrete examples of process improvements, which will improve efficiency without compromising on control of waste of funds, defrauding of the system, or abuse of the E-rate process.

E-mpa™ recommends the following deadlines be adopted:

- PIA review process:
  - Commencement of application review procedures. Reviewers must begin active review of an application:
    - Within 90 days of submission for applications filed 30 or more days before the close of the application window.
    - Within 120 days of submission for applications filed within 30 days of the close of the application window.
  - Reviewer resolution of information request responses – within 15 days of response by applicant.
  - Resolution of issues sent to services team, procedures team, USAC, etc. – 15 days (note – application status to be posted on Application Status webpage).
  - Completion of final review – within 7 days of completion of initial review.
  - Quality Assurance – clearance or remand to previous review level within 15 days.
  - Issuance of funding decision – within 7 days of Quality Assurance clearance.
- Other Processes should be initiated within 30 days of receipt and completed within 15 days if no additional information is required from applicant or service provider. In cases where responses are required, deadlines are recommended as follows
  - Invoice Reviews (BEAR/SPI, – within 15 days of response by applicant or service provider.
  - Form 486 Reviews – within 15 days of response by applicant.

- Higher Level Reviews (Special Compliance, Selective, Cost Effectiveness, Site Audit) – all levels of review within 30 days of response by applicant.
- SPIN Changes – within 15 days of response by applicant.
- Service Substitutions – within 30 days of response by applicant.
- Appeals – within 30 days of response by appellant.

When USAC fails to meet a deadline, within 5 working days USAC must email a report to the applicant explaining:

- Why the deadline was missed.
- What USAC will do to complete the process and render a decision.
- What (if anything) the applicant can do to expedite completion of the process.
- How to contact the responsible USAC manager to obtain additional information.
- When the decision will be made.

This email will be copied to the Telecommunications Access Policy Division. The TAPD will track missed deadlines and will penalize the responsible USAC entity. Such penalties could include financial penalties levied on USAC contractors, to be included in all future contracts.

*235. In addition, we seek comment on ways to expedite the application review process. Are there ways in which USAC can streamline the PIA review process so that applicants are not asked duplicative questions or asked for the same documentation for different applications or funding requests where previous responses or documentation are applicable? Commenters should provide specific examples of the problems they encounter during the application review process, including identifying specific duplicative requests made in the routine review process.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ has provided below a number of suggestions to streamline the Program Integrity Assurance (PIA) review process. In addition, there are a number of significant streamlining suggestions regarding multi-year contracts in our response to paragraphs 239 through 246.

1. Establish criteria to waive Final Review and/or Quality Assurance Reviews.
  - a. Final review criteria might only be required for:
    - Priority 1 applications for a Billed Entity (BEN) with total funding requests above a specified level.
    - All funding requests with new contracts.
  - b. Quality Assurance Reviews might be required for applications initially reviewed by reviewers who are new, relatively inexperienced, or showing sub-par performance.
2. Eliminate review of funding requests (FRNs) which, in the prior funding year, were from the same BEN, the same Service Provider (SPIN), and for nearly the same pre-discount cost (perhaps within 5%). This provision might be repeated for only two successive years, with the FRN being reviewed again every third year.

3. For Priority 1 FRNs that can be otherwise be approved on threshold, allow reviewers to ignore certain information that may be included with Item 21 Attachments:
  - a. For MTM or Tariff FRNs, ignore any attachments such as invoices or bid documents.
  - b. For contracted FRNs, only verify Contract Award Date (CAD) and Contract Expiration Date (CED).
4. For Item 21 Attachments, provide a standardized format (e.g.: comma separated value - .csv) for applicants to upload Item 21 information to USAC. This would greatly enhance the current on-line Item 21 Attachment data which has already improved PIA review throughput. This might have the added advantage of providing better granularity of “Below the Bucket” usage data to the FCC.
5. Modify the Services Matrix (currently used solely by SLD staff) to provide limited access for applicants and service providers. We are advised that certain information on the Services Matrix is considered confidential by service providers; these fields should be made unavailable to applicants. Applicants would have access only to part number, product name and description, and eligible/ineligible cost allocations. Applicant and service providers usage of this tool will:
  - a. Expedite preparation equipment lists for Priority 2 FRNs that reflect consistent nomenclature and accurate eligible cost allocations.
  - b. Allow USAC to create an Item 21 Attachment interface that will allow applicants to input accurately allocated equipment lists with nomenclature consistent with E-rate data bases. Input fields for number of units and unit costs will allow for system calculation of costs and allocation of ineligible costs on-line. This will greatly speed up review of Priority 2 FRNs by eliminating a lengthy, time-consuming task.
6. Overhaul existing tools used by PIA reviewers that are flawed and inefficient. For example:
  - a. Upgrading to one fully integrated database system.
  - b. Implementing software changes to increase reliability and responsiveness of data inquiries.
  - c. Investing in technology for PIA reviewers to increase efficiency.
7. Make information and links for all State Master Contracts bid through Form 470s available to reviewers and applicants. Implementation of this would likely require assistance of state E-rate coordinators.
8. Make school/district discount data for all states readily available to PIA reviewers.

*236. Additionally, at times, an entire application or groups of applications involving funding requests for different service providers may be held up pending resolution of one FRN for one provider. Are there changes that should be put in place so that other unrelated funding requests are not held up pending the resolution of an issue involving another FRN? SECA proposes that, absent an active criminal investigation in which the party is the subject, within 90 days of the lack of activity on an FCC Form 471 application or invoice, USAC should notify all affected parties of concerns that are holding up a decision on the application and submit*

*detailed requests for any additional documentation or information as part of the notification. Upon receipt of the requested information, SECA proposes that USAC should issue a decision within 90 days. We seek comment on this proposal and any other proposals setting timeframes for resolution of applications and release of funding commitments. If we were to adopt a deadline by which USAC must act, under what circumstances should we permit USAC to exceed the deadline in order to give full consideration to the application?*

### **E-MPA™ Comment/Recommendation**

E-mpa™ agrees with SECA that measures should be implemented so that other unrelated funding requests are not held up pending the resolution of an issue involving another FRN. Consistent with the deadlines outlined in our response to paragraph 234, E-mpa™ recommends that USAC issue a funding commitment decision letter (FCDL) with decisions for FRNs whose reviews are complete and status descriptions of any FRNs still in review. When the remaining funding requests are approved or denied, a separate FCDL would be issued.

E-mpa™ does not agree with the 90-day deadline recommended by SECA. See E-mpa's deadline recommendations in response to paragraph 234 above.

*237. Further, for USAC to more quickly release funding commitment decisions, should we limit the number of opportunities applicants are given to respond to USAC's requests for documents and clarification? As part of its review, USAC routinely gives applicants additional time to provide missing or incomplete information to USAC during PIA review.<sup>301</sup> When applicants' timely request an extension of time to submit documentation, USAC grants such extensions and gives applicants additional time to respond to their requests for information. The Commission has granted waivers of the E-rate rules providing applicants with additional time to submit documentation to USAC. These extensions of time also delay USAC's application review process and ultimately hinder the prompt release of funding commitment decisions. We thus seek comment on whether to limit the number of opportunities and length of time that applicants have to submit complete information to USAC in response to USAC's requests. Commenter's should specifically indicate any potential problems that may arise if we reduce the window of opportunity and any concerns with modifying USAC's outreach to gain complete information to complete their review of pending FCC Form 471 applications.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ believes that the procedures in place today should remain as they are with additional extensions allowed for extenuating circumstances. As recognized by the FCC in numerous appeal decisions, applicants are faced on a daily basis with diverse priorities in their job duties. Consequently, applicants frequently cannot meet USAC's response deadlines. The current 15 day letter process with extensions should be supplemented with the opportunity for applicants to request longer extensions for extenuating circumstances. Since responding

timely to requests is in the best interest of the applicant, it has been our experience that if an applicant needs additional time to respond, they usually have a valid reason. The party most harmed by a lengthy extension of the review process is the applicant.

*239. Multi-year contracts. E-rate applicants are permitted to enter into multi-year contracts, but applicants with multi-year contracts must file an FCC Form 471 application and go through the same review process every year. Our rules prohibit USAC from issuing multi-year funding commitments in the E-rate program. Stakeholders have argued that it is a waste of an applicant's time to file an application for the same services year after year, and that it is a waste of USAC's time to review the same applications year after year.*

#### **E-MPA™ Comment/Recommendation**

Applicants with multi-year contracts should file an FCC Form 471 each year but, after the first year of the contract, it should not be necessary for them to file an Item 21 Attachment or go through the review process unless the amount applied for changes. In the second and subsequent years the applicant would simply file an FCC Form 471 (Block 5 Item 15d already accommodates this issue) putting USAC on notice. We point out that it is possible for the cost applied for to change in subsequent years without the contract changing (because of cost formulas and scales included in the terms of the contract). Only review required in subsequent years would serve to validate NSLP/Discounts and Eligible Services.

*240. We agree with stakeholders that multi-year contracts have the potential to drive down service costs, provide more certainty, and that we should minimize duplicative application review by USAC. At the same time, given the dynamic marketplace for many E-rate supported services, it is important that E-rate applicants not bind themselves to multi-year contracts that require applicants to pay prices that are higher than they would receive had they re-sought competitive bids. In balancing those issues, we seek comment on a number of changes to our handling of multi-year contracts.*

#### **E-MPA™ Comment/Recommendation**

Applicants with multi-year contracts should show their intent to re-apply each subsequent year, and the easiest way to do this is to file an FCC Form 471 Block 5 each year in which they intend to use E-Rate funding for that contract. In the second and subsequent years the applicant would simply file an FCC Form 471 (Block 5 Item 15d accommodates this issue) putting USAC on notice. Only review required in subsequent years would serve to validate NSLP/Discounts and Eligible Services.

*241. First, we propose that, absent a change in the contract, service provider or recipients of service, we allow E-rate applicants with multi-year contracts that are no more than three years in length (including any voluntary extensions) to file a single FCC Form 471 application for the funding year in which the contract commences and go through the full review process just one*

time for each such multi-year contracts. We seek comment on this proposal, and on what additional steps E-rate applicants should have to take in the second and third year of such contracts to confirm their request for E-rate support for the subsequent years. We specifically seek comment on the following proposed rule language:

*Multi-year contracts. An eligible school, library or consortium that includes an eligible school or library seeking to receive discounts under this subpart may submit to USAC a single FCC Form 471 covering all the years of a multi-year contract, provided that the term of the contract including extensions, does not exceed three years. An FCC Form 471 covering a multi-year contract must be submitted to USAC before the start of the first funding year covered by the multi-year contract.*

242. Second, we seek comment on amending our rules to permit multi-year commitments in the E-rate program. In the Healthcare Connect Fund Order, we allowed applicants to request a funding commitment for a multi-year contract that covers up to three years of funding. Unlike the E-rate program, however, the universal service rural health care program is not currently oversubscribed, so it is more feasible for that program to issue multi-year commitments. Is this difference relevant to our handling of multi-year commitments? Should multi-year funding commitments in E-rate be conditional on the funds being available in subsequent years?

#### **E-MPA™ Comment/Recommendation**

E-mpa™ supports the concept of multi-year funding approvals. However, as the FCC listed in the NPRM, several considerations need to be made prior to approving multi-year contracts. Since the funding available as well as eligible services changes from year to year, we recommend that the conservative approach would be to require applicants with multi-year contracts to show their intent to re-apply for funding in subsequent years by filing a FCC Form 471 Block 5 each year in which they intend to use E-Rate funding for the multi-year contract. In the second and subsequent years the applicant would file an FCC Form 471 (Block 5 Item 15d accommodates this issue) putting USAC on notice. Since the multi-year contract terms are the same as in the prior year, the only review required by USAC in subsequent years would be to validate NSLP/Discounts and Eligible Services.

E-mpa™ agrees that multi-year approvals for multi-year contracts would be preferable but the implementation of a multi-year approval is problematic considering the changes in funding available each year as well as the changes in eligible services. Therefore, we recommend that the FCC continue to support multi-year contracts by reducing PIA review in the second and subsequent years of the contract. Multi-year approvals, however, may need to be considered at a later date when the significant rule changes involved in modernizing the E-rate program have been implemented.

## **Invoicing and Disbursement Process**

259. *In order to maximize administrative efficiency, we now propose changes to improve the E-rate disbursement process. In particular, we propose to modify our process to permit schools and libraries to receive disbursements directly from USAC and to adopt specific invoice deadline and invoice deadline extension rules.*

### **E-MPA™ Comment/Recommendation**

E-mpa™ agrees with the FCC's proposal to permit schools and libraries who pay the full cost of the services under the BEAR process to receive disbursements directly from USAC. We agree that this change would maximize administrative efficiency. Additionally, disbursements paid electronically to applicants would further protect against theft and fraud.

260. *Currently, schools and libraries may choose either of two methods of seeking reimbursement for E-rate supported services. An applicant may pay its service provider the full cost of the E-rate supported services and then submit to USAC an FCC Form 472, Billed Entity Application for Reimbursement (BEAR) Form. In the alternative, the applicant may pay the service provider only the applicant's portion of the E-rate supported services and then the service provider must file an FCC Form 474, Service Provider Invoice Form (SPI form), with USAC to receive reimbursement. Regardless of which method the applicant chooses, USAC remits the E-rate support payments to the service provider. If the applicant is using the BEAR method, the service provider reimburses the applicant, thus requiring coordination between the applicant and service provider in order for the applicant to receive payment.*

261. *The Commission established the current reimbursement system in the Universal Service First Report and Order, concluding that service providers, rather than schools and libraries, should seek compensation from USAC for "administrative ease." We seek comment on adopting a revised disbursement process that allows applicants, paying the full cost of the services under the BEAR process, to receive direct reimbursement from USAC. Under this proposal, the service provider would no longer serve as the pass-through for the reimbursement of funds where an applicant has paid the service provider in full for the services. Where an applicant, however, pays only the reduced cost of the services directly to the service provider, then the service provider will continue to file a SPI form with USAC to receive reimbursement. We seek comment on whether making direct payments to applicants under the BEAR process would simplify the E-rate disbursement process for applicants and service providers by removing a step in the process.*

*One of the E-rate program goals proposed above is to streamline the administration of the program. We seek comment on whether this change would improve the efficiency of the program by minimizing unnecessary delays in the disbursement process due to an applicant's request to review bills before the service provider(s) submits the bills to USAC for payment. We*

*also seek comment on whether there would be other consequences to applicants, service providers and the program from making such changes to our rules. For example, if we move the CIPA certifications to another form, would applicants using the BEAR process and seeking reimbursement directly need to submit an FCC Form 486?*

### **E-MPA™ Comment/Recommendation**

Since the FCC Form 472 BEAR currently requires the applicant to certify receipt of service and proper payment of service on Block 3, the requirement that disbursements pass through the service provider to the applicant seems purely administrative and contradictory to the notion of “administrative ease” set forth in the Universal Service First Report and Order. The removal of the step that requires service providers to receive electronic funds from USAC and then remit those funds to the applicant, within a specified timeframe, would therefore simplify the process for both the service provider and the applicant.

Electronic disbursements paid directly to the applicant would ensure applicants received disbursements within the proper timeframe set by USAC and the FCC. Electronic payments to the applicants would alleviate the need for USAC to seek further confirmation, in Good Samaritan cases and in PQA Reviews for example, that the applicant did in fact receive payment from the service provider.

For the reasons listed above, E-mpa™ agrees that permitting schools and libraries, paying the full cost of the services under the BEAR process, to receive disbursements directly from USAC would further streamline the administration of E-Rate.

E-mpa™ also recommends adding functionality in the online BEAR system to show additional status. If a BEAR is rejected by the service provider, the online BEAR tool does not show that it was rejected. It only shows that the BEAR was “Complete”. The same status “Complete” shows whether or not the BEAR was approved or rejected by the provider. Currently the only way the applicant knows if the BEAR was rejected is when the BEAR notification letter is received with zero disbursements. If the online BEAR tool would show status “Approved” or “Rejected” instead of “Complete” the applicant would know if they needed to resubmit the BEAR or not.

Another recommendation would be to include a comment field for the service provider to enter reasons for rejection of the BEAR for the applicant so that the applicant can re-submit the BEAR with the proper corrections.

E-mpa™ does not recommend eliminating the FCC Form 486 for BEAR filings. The Form 486 includes certifications for both CIPA and technology plans which need to be made in advance of filing for reimbursement. To move the certifications to the Form 472 would be confusing especially since this step could be missed when both Service Provider Form 474 and BEAR

Form 472 processes are being utilized for various funding requests on the same Form 471 application.

*262. We next seek comment on whether the Communications Act creates any barriers to the payment of universal service funds directly to E-rate applicants. We note that section 254 of the Act gives the Commission broad discretion in designing the E-rate program, and that section 254(h)(1)(B) requires that a carrier serving a school or library either apply the amount of the E-rate discount as an offset to its universal service contribution obligations or shall be reimbursed for that amount utilizing universal service support mechanisms. One possible interpretation of that provision is that a carrier must receive any universal service support for discounted services it provides to schools or libraries. On the other hand, the Universal Service First Report and Order suggested that schools and libraries could directly receive universal service support, although it declined to adopt such an approach for policy reasons. In addition, the Fifth Circuit upheld the Commission's authority under sections 4(i) and 254(h)(2)(A) to provide support outside the express framework of section 254(h)(1)(B). We seek comment on the possible interpretations of section 254 in this regard. If the only requirement in the Act regarding reimbursement is that the service provider be made whole, we believe modifying the current BEAR process, to allow USAC to reimburse the applicant directly would provide sufficient documentation to demonstrate that the applicant has fully paid for the requested services and is entitled to direct reimbursement from USAC. As it currently exists, the BEAR process satisfies that provision of the Act because the BEAR form requires the applicant to certify that it has made full payment to the service provider. Moreover, the service provider currently signs the BEAR form to indicate that all obligations have been met. We invite comment on these views.*

### **E-MPA™ Comment/Recommendation**

Although E-mpa™ makes no legal representation in this proceeding we affirm the commission's interpretation of section 254(h)(1)(B), specifically, that the FCC Form 472 BEAR currently satisfies that provision since the form requires the applicant to certify receipt of service and proper payment of service on Block 3.

*263. We next ask whether there are additional improvements that could be made to the invoicing process or certifications that are required on the invoicing forms, FCC Form 472 and FCC Form 474. Currently, service providers must make a certification each time it files an FCC Form 472, resulting in some large service providers having to submit thousands of certifications each year. We seek comment on whether the FCC Form 473, the Service Provider Annual Certification Form, should incorporate Block 4 of the FCC Form 472 BEAR form to include the current service provider acknowledgement certifications in Block 4 of the current FCC Form 472, or if there are other approaches that would improve the administrative process while still adequately protecting against waste, fraud, and abuse.<sup>343</sup> Are there other certifications or components of the invoicing forms that should be revised in order to improve administrative efficiency or protect against waste, fraud, and abuse? In its 2010 report, the*

GAO noted that USAC did not compare actual bills to the invoices before disbursing funding.<sup>344</sup> Should USAC require additional documentation to be filed with the invoices in some instances? Should we require that applicants approve a service provider invoice prior to reimbursement?

#### **E-MPA™ Comment/Recommendation**

E-mpa™ does not recommend any changes to the current invoice review process.

### **Streamlining E-rate Appeal Process**

*269. We seek comment on other changes Commission staff can implement to improve the appeals review process. Should Commission staff explore other ways to streamline the orders disposing of the appeals? When the Bureau grants an appeal on delegated authority, should it simply specify that the appeal is granted and not provide any analysis, or does the analysis serve the important function of providing guidance to other E-rate stakeholders? Would the request for review filed by the party provide enough guidance to interested parties? We encourage commenters to suggest creative methods to improve the efficiency of the process while providing parties and other interested stakeholders with meaningful guidance about the decision. Finally, should we consider more comprehensive changes to the appeal process pertaining to E-rate decisions? Should we reduce the number of opportunities E-rate applicants have to contest adverse findings? If so, how could that be done consistent with relevant statutory requirements, and what rule changes would be needed? Could we amend or clarify the E-rate rules to reduce the number and type of USAC decisions that can be appealed? Are there other changes we can make to improve the efficiency of the appeals process?*

#### **E-MPA™ Comment/Recommendation**

E-mpa™ encourages the FCC to explore all available avenues to streamline disposition of appeals; however, the most effective method to reducing the inventory of appeals in process is to reduce the number of incoming appeals. The number of new appeals can be significantly decreased by clarifying and simplifying the E-rate processes, increasing productivity and transparency at USAC, and improving communications with applicants by USAC and the FCC. These are issues discussed in much detail throughout our response to this NPRM.

The FCC's analysis included in the appeal decision is important as guidance to all parties and should be continued. Because the FCC's appeal decision is arrived at by an often lengthy analytical process, writing a condensed description of the analysis should not significantly increase the time to issue a decision; hence eliminating the analysis from the ruling can only marginally decrease the appeal backlog. On the other hand, failure to provide guidance to stakeholders holds the potential to significantly increase the likelihood of continuation of the

same violations of policy which will culminate in more appeals, effectively increasing the backlog.

E-mpa™ agrees that each appeal ruling needs to contain the reason for the appeal, which includes the request for review or waiver filed by the appellant; the FCC's decision; and the analysis that led the FCC to reach that decision. The critical information for E-rate stakeholders coming out of an appeal is the Commission's thinking on the issue in question; this analysis is the source of guidance to stakeholders.

In E-mpa's opinion, the FCC's analysis of the appeal decision is very beneficial to a variety of stakeholders, the overwhelming number of whom are not lawyers and not adept in interpreting "legalese". Therefore, the guidance provided and analysis of the decision in clear and common language needs to be continued for future appeal decisions.

Elsewhere in our streamlining responses we recommended greater transparency in communications and issuance of decisions for USAC. We recommend that the FCC consider setting deadlines for appeal responses and providing status reports for appeal decisions that cannot be made within the recommended deadline. For example, if the FCC set a standard deadline of response for appeals of 120 days, applicants whose appeal decisions will take longer than 120 days would receive email and/or mail notifications to the appellant explaining why the FCC has not yet made a decision on the appeal, what specific steps will be taken to complete its process, and when the FCC expects to issue the decision for the appeal. Subsequent notices could be sent every 60 days until the decision is rendered. This process would significantly reduce the appellant and related stakeholder's need to constantly submit inquiries to the USAC Ombudsman office, Congressional representatives, and other USAC and FCC staff.

## **The Children's Internet Protection Act**

*271. Stakeholders have sought clarification on the applicability of CIPA to devices not owned by E-rate recipients but using E-rate supported networks and to off-premises use of devices owned by schools and libraries. We seek input from interested parties about the measures schools and libraries are taking and need to take to comply with CIPA when they allow third-party devices to connect to their E-rate supported networks. Also in response to stakeholder concerns, we seek comment on what steps schools and libraries are taking and must take to ensure that they are not violating CIPA when they provide employees, students and library patrons with portable, Internet-enabled devices that can be used off-premises.*

*273. Covered devices. We seek comment on what devices are covered by CIPA. Congress mandates that CIPA apply to schools and libraries "having computers with Internet access,"<sup>361</sup> and also requires each such school or library to certify that it is enforcing a policy of Internet safety that includes the operation of a technology protection measure "with*

*respect to any of its computers with Internet access.” We seek comment on whether the language “computers with Internet access,” as used in the context of CIPA, includes all devices used to access the Internet, including all portable devices such as laptops and netbooks with wired Internet access, with Wi-Fi capability, or with wireless data or air cards; cellular phones or “smartphones” capable of accessing the Internet; and Internet-enabled e-readers and tablets. As more and more devices, from routers to refrigerators, are equipped with computing capability, we seek comment on limiting principles we should apply to our treatment of what constitutes a computer with Internet access for CIPA purposes, and how those limiting principles relate to the statutory language and goals of CIPA. For example, should we consider as a limiting principle the language in CIPA that requires the operation of a technology protection measure that provides protection against access to “visual depictions” that are obscene, child pornography, or harmful to minors? Specifically, does the use of “visual depictions” in CIPA mandate that in order to fall within CIPA, the computers with Internet access in question must at least provide a screen, monitor, or other way to view the prohibited material? We also invite commenters to recommend specific changes to our rules that would clarify this issue. For example, should we include a definition of “computers with Internet access” in our CIPA-related rules, and what should that definition be?*

*274. We also seek comment on whether the phrases “having computers with Internet access” and “with respect to any of its computers with Internet access” and other similar language in the statute means that schools and libraries are required to comply with CIPA only with regard to those computers that they own or control. Does this interpretation fulfill the intended purpose of CIPA? We also seek comment on whether we should amend our CIPA-related rules to reflect this reading of the statute, and if so how should we amend them. In the alternative, we seek comment on whether CIPA should be interpreted more broadly to be focused on protecting children from harmful online content on any device, and therefore require CIPA compliance with respect to any computer that is accessing the Internet using E-rate supported Internet access or internal connections, regardless of the ownership or control of the device used to access such content.*

*275. Off-Campus Use. We seek comment on whether CIPA requirements extend to school or library computers taken off-campus and used with outside networks that are not supported by E-rate. If we find that CIPA requirements do not apply to computers with Internet access when used with networks that are not supported with E-rate funds, how should we address instances where school or library computers are used to access the Internet using a service that is supported for on-campus use, but not for off-campus use? For example, if a student uses a tablet with an Internet access data plan, the school could seek E-rate support for the portion of the cost of the data plan used on-campus, but not for the portion used off-campus. Should the CIPA requirements only apply when the computer is used on campus, because the school is not seeking E-rate support for the off-campus portion of the cost of the data plan? We also seek comment on whether our existing CIPA-related rules need to be amended to cover these off-campus use situations. We request that commenters be as specific as possible when recommending amendments to our rules*

## **E-MPA™ Comment/Recommendation**

E-mpa™ commends the FCC for seeking to clarify its rules relating to CIPA. Protecting our children from harmful information via the Internet is critically important. Therefore, we believe that the CIPA rules should apply to any device connecting to an E-Rate supported network.

### **Extending the E-rate Document Retention Requirements**

*295. We propose to extend the E-rate program document retention requirements from five to at least ten years. We seek comments on the benefits and burdens of doing so. Access to relevant documents is crucial to conducting effective audits of E-rate applicants and service providers, and otherwise investigating compliance with the requirements of the E-rate program. Our rules currently require schools and libraries to retain all documents related to the application, receipt, and delivery of eligible services received under the E-rate program for at least five years after the last day of the delivery of services. Schools and libraries must also retain all other documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program as well as all asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase. Service providers are also required to retain documents related to the delivery of eligible services for at least five years after the last day of service delivery and all other documentation that demonstrates compliance with the statutory or regulatory requirements for the E-rate program.*

*296. In the USF/ICC Transformation Order and FNPRM, the Commission revised the record retention requirements for recipients of high-cost support to extend the retention period from five years to ten years. In doing so, the Commission determined that the high-cost retention requirement of five years was inadequate for the purposes of litigation under the False Claims Act, which can involve conduct that relates back substantially more than five years. Similarly, in the Lifeline Reform Order, the Commission proposed to amend its rules to extend the retention period for eligible telecommunications carriers receiving low-income universal service support from three years to at least ten years. Similar concerns lead us to propose to amend section 54.516 of the Commission's rules to read as specified below and we seek comment on this proposed rule:*

*(a) Record keeping requirements –*

*(1) Schools, libraries and consortia. Schools, libraries, and any consortium that includes schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Schools, libraries, and any consortium that*

*include schools or libraries shall also retain any other document necessary to demonstrate compliance with the statutory or regulatory requirements for the schools and libraries mechanism. Schools and libraries shall maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.*

*(2) Service providers. Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 10 years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Service providers shall also retain any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries universal service support mechanism.*

297. *We also seek comment on whether there are other changes we should make to our document retention requirements. For example, should our rules specify that applicants and service providers must keep records of all their communications relating to bids for and purchases of E-rate supported services? Should we extend the required retention of records in the event of any Governmental investigation, audit, or other governmental inquiry involving a particular participant or applicant for funding in the E-rate program to avoid destruction of potentially relevant documents. We further seek comment on the manner in which such an extension would be implemented. For example, should the obligation for an extended retention period be immediately and automatically triggered by a participant or applicant's knowledge that an investigation of its E-rate funding or E-rate requests is ongoing? If so, should the record retention extension be a blanket extension applying to all existing E-rate documents in its possession or should an extension be implemented only at the discretion of the Commission, upon direction from the Commission or USAC, to the party involved? In other words, should additional retention be required and permitted "as directed by the Commission or USAC" and targeted to those documents determined to be appropriate in the Commission's sole discretion? Would such a targeted "hold" requirement be better than an automatic, blanket hold? We seek comment on these options.*

### **E-MPA™ Comment/Recommendation**

The FCC seeks comments on their proposal to "extend the E-rate program document retention requirements from five to at least ten years." and also seeks "comments on the benefits and burdens of doing so." When considering such a rule change the FCC should look at the cost benefit analysis of such a proposal. Absent instances of suspected waste, fraud, or abuse of program funds it is very rare for USAC or the FCC to conduct an audit more than five years after the last date to deliver services for a given funding year. This begs the question of whether forcing such a burden on all applicants is a worthwhile initiative or if perhaps the FCC should focus their efforts on ensuring that the few suspected bad actors retain documentation in excess of five years.

Perhaps rather than a blanket extension of the record retention rules the FCC should extend the record retention requirements “in the event of any Governmental investigation, audit, or other governmental inquiry involving a particular participant or applicant for funding in the E-rate program.” The FCC seeks comment on whether such an extension of the retention period be “immediately and automatically triggered by a participant or applicant’s knowledge that an investigation of its E-rate funding or E-rate requests is ongoing?” and whether such a “retention extension be a blanket extension applying to all existing E-rate documents in its possession or should an extension be implemented only at the discretion of the Commission?”

It is the opinion of E-MPA™ a targeted extension of the record retention requirements is more appropriate than increasing the record keeping requirements to 10 years for all applicants. The current rules require applicants to retain all documents related to the application, receipt, and delivery of eligible services received under the E-rate program for at least five years after the last day of the delivery of services. While five years is mentioned in the rule, many records need to be maintained for much longer than five years. Consider the following scenario: in October of 2008 an applicant initiated a competitive bidding process that resulted in the award of a five-year contract. That five year contract will be referenced on the Form 471 for Funding Years 2009 through 2013. The service delivery deadline for Funding Year 2013 is June 30, 2014. Therefore, records relating to that procurement need to be maintained through at least June 30, 2019 more than 10 years after the procurement took place. Under a 10 year record retention those records would need to be maintained through June 30, 2024 or more than 15 years.

A five year retention period allows USAC more than ample time to conduct reviews for the vast majority of applicants. For the few applicants or service providers engaged in questionable behavior that behavior is usually discovered well before the five year period has expired. To avoid having the “tail wag the dog” and increase the administrative burden on all applicants E-MPA™ suggests the following changes to 54.516 of the Commission’s rules:

*(a) Record keeping requirements –*

*(1) Schools, libraries and consortia. Schools, libraries, and any consortium that includes schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least five years after the last day of the delivery of services or from the end of the applicable funding year, whichever is later. Schools, libraries, and any consortium that include schools or libraries shall also retain any other document necessary to demonstrate compliance with the statutory or regulatory requirements for the schools and libraries mechanism. Schools and libraries shall maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.*

*(2) Service providers. Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least five years after the last day of the delivery of services or from the end of the applicable funding*

year, whichever is later. Service providers shall also retain any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries universal service support mechanism.

(3) Upon written notification to the school, library, consortia, or service provider from the FCC or the administrator the above record retention requirements can be extended to allow additional time to complete any Governmental investigation, audit, or other governmental inquiry involving a particular participant or applicant for funding in the E-rate program. At the discretion of the FCC the extended record retention period may relate to all E-rate records or only a subset of said records.

**Conclusion:**

We appreciate the time and consideration dedicated by the Commission to these issues and welcome additional improvements to the program which will continue this critical program for schools and libraries across the nation and the students and library patrons they serve.

Submitted by:



Deborah J. Sovereign  
Treasurer

**E-Rate Management Professionals Association, Inc.**  
1101 Stadium Drive, Ada, OK 74820

September 16, 2013

## **Appendix A: FCC Form 473 Certification**

### **Block 2: Certification**

I declare under penalty of perjury that the foregoing is true and correct:

I am authorized to submit this Service Provider Annual Certification Form on behalf of the above-named Service Provider, which has been assigned the above-referenced Service Provider Identification Number, and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this Form has been examined and reviewed and is true, accurate and complete. I acknowledge that any false statement on this Form or on the Service Provider Invoice Form (FCC Form 474) 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 that any such false statement could subject this Service Provider to liability under the False Claims Act.

9. I certify that the Service Provider Invoice Forms (FCC Form 474) that are submitted by this Service Provider contain requests for universal service support for services which have been billed to the Service Provider's customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator.

10. I certify that the Service Provider Invoice Forms (FCC Form 474) that are submitted by this Service Provider are based on bills or invoices issued by the service provider to the Service Provider's customers on behalf of schools, libraries, and consortia of those entities as deemed eligible for universal service support by the fund administrator, and exclude any charges previously invoiced to the fund administrator for which the fund administrator has not yet issued a reimbursement decision.

11. I certify that any requests for reimbursement that are sought under a Service Provider Invoice Form (FCC Form 474) for discounts for products or services that contain both eligible and ineligible components are properly allocated as required by the Commission's rules at 47 C.F.R. § 54.504(e) (1) and (2).

12. I certify that this Service Provider makes available to customers, upon their request, separate prices for distinct services to assist Billed Entity Applicants in identifying the portions of their bills that represent the costs of services provided to eligible entities for eligible purposes.

13. I certify that no non-discount portion of the costs for eligible services will be waived, paid, or promised to be paid by this Service Provider. I acknowledge that the provision by any service provider of a supported service, or of free services or products unrelated to the supported service or product constitutes a rebate of the non-discount portion of the supported services as stated in 47 C.F.R. § 54.523.

14. I certify that no kickbacks, as defined in 41 U.S.C. § 8701, were paid by this Service Provider to anyone in connection with the schools and libraries universal support program.

15. I certify that this Service Provider is in compliance with the Commission's rule and orders regarding gifts and this Service Provider and has not directly or indirectly offered or provided any gifts, gratuities, favors, entertainment, loans, or any other thing of value to any eligible schools, libraries, or consortium that includes eligible schools or libraries, except as permitted by the Commission's rule at 47 C.F.R. § 54.503(d).

16. I certify that if the Fund Administrator, as necessary, requests additional supporting information, this Service Provider will make all documents requested available to the Fund Administrator as required by 47 C.F.R. § 54.516(b). I certify that this Service Provider will retain for at least five years (or whatever

retention period is required by the rules in effect at the time of this certification), after the last day of delivery of discounted services, (1) any and all records that I rely upon to complete this form and each Service Provider Invoice Form (FCC Form 474) that is submitted by this Service Provider during the present funding year and (2) all documents necessary to demonstrate compliance with the statutory or regulatory requirements for the schools and libraries universal service support program as required by 47 C.F.R. § 54.516(a)(2) I recognize that this Service Provider may be audited pursuant to 47 C.F.R. § 54.516(c), and that the Service Provider must provide such records as required by 47 C.F.R. § 54.516(b)

17. I certify that the prices in any offer that this Service Provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered.

18. I certify that the prices in any offer that this Service Provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this Service Provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law.

19. I certify that no attempt will be made by this Service Provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

20. I certify that this Service Provider is not suspended or debarred from participating in Federal programs.

21. I certify that, in addition to the foregoing, this Service Provider is in compliance with the rules and orders governing the schools and libraries universal service support program, and acknowledges that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with the rules and orders governing the schools and libraries universal service support program could result in civil or criminal prosecution by law enforcement authorities.