Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Support Mechanism	)	CC Docket No. 02-6
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	
	)	

REPLY COMMENTS OF THE SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION

October 23, 2023

EXECUTIVE SUMMARY

The Schools, Health & Libraries Broadband (SHLB) Coalition respectfully submits these reply comments responding to the Commission's Report and Order (Order) and Further Notice of Proposed Rulemaking (Further Notice) concerning the E-rate Program (E-rate) for Tribal libraries and other applicants.[1] SHLB welcomes this opportunity to not only reply directly to other comments submitted in this proceeding, but to continue to encourage the Commission to implement proposals that would streamline the administration of the E-rate program, provide guidance in the best interest of all applicants, and enhance E-rate's reach to ensure all eligible institutions are able to participate.

SHLB is pleased that other commenters agree with many positions we suggested in our initial comments. For example, many commenters provided insight regarding the current invoicing process, recommending that the Commission allow greater flexibility for participants. Commenters agree that the Commission should permit E-Rate participants to seek an extension of the invoice deadline when the request is made within fifteen days of the original invoice filing deadline date.[2] Additionally, others agree that the Commission should eliminate the current extraordinary circumstances standard imposed on an applicant that requests an invoice deadline

[1] *See Schools and Libraries Universal Support Mechanism, Federal-State Joint Board on Universal Service*, and *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Report and Order (*Order*) and Further Notice of Proposed Rulemaking, FCC 23-56 (rel. July 21, 2023) (*Further Notice*).

[2] *See i.e.*, Comments of the E-rate Management Professional Association, Inc., 7, stating "Other areas of the E-Rate program offer flexibility for missed deadlines. The invoice deadlines should align with the rest of the E-Rate program."; Comments of NCTA – The Internet & Television Association (NCTA Comments), 6; Comments of the Council of The Great City Schools, 3; and Comments of Illinois Office of Broadband (IOB Comments), 7, stating that "[i]n a substantial number of cases, applicants may fail to request an extension before the invoice deadline, either inadvertently or because of emergent or extenuating circumstances. A further 15-day grace period for doing so will alleviate the impact of such failures and avert the dire consequences."

waiver.[3] Further, regarding the recovery process, commenters expressed support for SHLB's position that pending E-rate applications should be deferred, rather than dismissed, when a participant is on redlight status.[4]

In these reply comments, SHLB provides additional suggestions to assist the Commission in streamlining the E-rate program. Regarding invoicing, SHLB reiterates its position that service providers should comply with program rules and supports the Commission's proposal to clarify the Commission's intent regarding the SPI process. We believe, however, that AT&T's processes effectively bars applicants from using the SPI process as the Commission intends. We thus urge the Commission to enforce its SPI invoicing rules when service providers do not comply with them.

Regarding the competitive bidding process, we agree that clarification about when an applicant should restart the competitive bidding process would be helpful. We caution the Commission, however, that such guidance should not create bright-line rules that remove USAC's ability to conduct a fact-specific inquiry during the application review process. Likewise, we agree that USAC could help provide additional information as to the types of documents that would satisfy the Commission's evidence of its legally binding agreement requirement, but again ask that any clarification should provide only illustrative examples and maintain flexibility for participants. Finally, we would suggest that the Commission should not

[3] NCTA Comments at 6-7; USTelecom Comments at 4.

[4] *See* Comments of State E-Rate Coordinators Alliance, 47-48, stating "[b]y placing a hold on the pending applications rather than dismissing them, the stakeholder has a more streamlined opportunity to resolve the issues and enable their applications to advance."; Comments of Uniti Fiber LLC (Uniti Comments), 6, stating "the FCC should instruct USAC to hold any pending E-Rate request while the participant works to correct their red light status."

prohibit competitive bid evaluations that award points for categories not related to provision of E-rate services.

Regarding the Commission's inquiries about changes or improvements to E-rate forms, SHLB agrees with commenters that the Commission should eliminate Form 486 and finish its proceeding to modify and clarify the terms used in the Form 470. SHLB also urges the Commission to carefully consider whether rule changes are necessary regarding product demonstrations, being wary of imposing any additional recordkeeping requirements on schools and libraries without a demonstrated need for the rule.

Finally, SHLB suggests additional considerations that could provide transparency and further streamline the program, such as requiring USAC to make publicly available requests for review of its decisions; implementing a process to streamline review of applications involving multi-year contracts; and amending Form 471 to include a checkbox clearly indicating that the funding request is based on a multi-year contract and then asking whether the funding request is for the initial year of that contract or was for the second or later years.

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I. SERVICE PROVIDERS SHOULD NOT BE ALLOWED TO REQUIRE UP FRONT PAYMENT AFTER THE FUNDING DECISION WHEN AN APPLICANT ELECTS THE SPI PROCESS

As SHLB noted in its initial comments, it should go without saying that service providers should comply with program rules, including invoicing rules.[5] SHLB believes that the current rules prohibit service providers who are providing service provider invoice (SPI) billing from charging applicants more than the applicant's non-discount share.[6] Nevertheless, SHLB supports the Commission's proposal to clarify the Commission's intent regarding the SPI process.[7]

AT&T was the only service provider that objected to the rule clarification.[8] Contrary to AT&T's assertion that no applicant has requested a change in its billing process, SHLB has a number of members that would greatly appreciate a change in AT&T's billing processes. Also contrary to AT&T's assertion, there is demonstrable harm to applicants – some of whom have no real competitive alternative and have no choice but to use AT&T's services.[9] First, as AT&T describes, AT&T requires applicants to pay in full up front after the funding commitment is issued.[10] The Commission developed the SPI process so applicants that could not afford to pay in full for their services would only have to pay their non-discount share. As the Commission noted at the time:

> providing applicants with the right to choose which payment method to use will help to ensure that all schools and libraries have affordable access to telecommunications and Internet access services. The Commission previously

[5] SHLB Comments at 23.

[6] *In the Matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9217, ¶ 44 (2003).*

[7] *Further Notice*, ¶ 75.

[8] AT&T Comments.

[9] AT&T Comments at 6.

[10] *Id.* at 4.

> noted in the *Universal Service Order* that "requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries." The comments in the present record have confirmed that many applicants cannot afford to make the upfront payments that the BEAR method requires. In light of the record before us, we conclude that the potential harm to schools and libraries from being required to make full payment upfront, if they are not prepared to, justifies giving applicants the choice of payment method. [11]

Requiring its customers to pay each monthly bill up front until AT&T completes its billing process is contrary to the rule and harms customers who cannot afford to pay the full amount. From our understanding, if a school or library customer does not pay on time, AT&T will send the school or library to collections and can even threaten to terminate service. This is not a situation where AT&T bills the applicant in full but does not actually expect payment until it starts receiving reimbursement from USAC.[12]

Second, the Commission has said that service providers do not have to provide the SPI process prior to a funding decision, but the rules do not allow service providers to take as long as they want before starting the SPI process, as AT&T is doing.[13] AT&T notes that it will not provide any credits until after it receives the Form 486 Notification Letter and AT&T finishes its review of the completed Grid spreadsheet – both of which occur after the funding commitment is issued, sometimes significantly after the Funding Commitment Decision Letter. The Commission specifically rejected service providers' arguments that the SPI process will result in

[11] *Second Report and Order*, ¶ 47 (internal citations omitted).

[12] We also note applicants are supposed to pay their bills within 90 days in most circumstances, according to program rules. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15816, ¶ 24 (2004).

[13] *Second Report and Order*, ¶ 49 ("[s]ervice providers are under no obligation to provide discounts or reimbursements until a funding decision is approved, and we therefore find that it would be inappropriate to require providers to offer discounted service before any funding decision is made to authorize such discounts.").

significant administrative costs, and instead gave service providers until Funding Year 2004 to come into compliance with the rules.[14]

Finally, SHLB notes that AT&T's invoicing process itself places nearly all of the burden on applicants to fill out forms and attest to their correctness, relieving AT&T of any responsibility to ensure its own invoicing forms' accuracy. As AT&T noted, it requires applicants to fill out AT&T's burdensome "Grid" spreadsheet.[15] This requires applicants to enter every piece of information regarding the funding request into AT&T's spreadsheet.[16] If there is any error, the applicant will not receive its credits. SHLB members familiar with AT&T's processes note that, in their experience, credits from AT&T are not applied within two to three months after the Form 486 Notification and submission of the Grid, but often four to even eight months later. This is *after* USAC's approval of the Form 486, which, in addition to AT&T's review of the Grid spreadsheet, is outside of the control of the applicants. AT&T also requires applicants to submit the Grid to AT&T more than 120 days before the invoicing deadline or it will not submit the invoice.[17]

AT&T's process effectively bars applicants from using the SPI process as the Commission intends. The Commission should enforce its billing method rules when service providers do not comply with them.

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[14] *Id.* at ¶ 50.

[15] https://www.erate.att.com/; *see also* https://www.corp.att.com/erate/frequently-asked-questions/.

[16] https://www.corp.att.com/erate/wp-content/uploads/sites/13/2023/06/ASEod_ADI_bill_examples.pdf.

[17] https://www.erate.att.com/.

II. THE COMMISSION SHOULD IMPROVE THE COMPETITIVE BIDDING PROCESSES BY PROVIDING CLARIFICATION THROUGH GUIDELINES AND ILLUSTRATIVE EXAMPLES, BUT MAINTAIN APPLICANT FLEXIBILITY

In the *Further Notice*, the Commission inquires about various aspects of the competitive bidding process for E-rate applicants, specifically requesting comment about how it could change or clarify certain bidding requirements.[18] Many commenters provided insight on this item, including suggestions for clarification on when competitive bidding must be restarted and what constitutes evidence of a legally binding agreement. SHLB takes this opportunity to respond to each of these issues, as well as to an additional issue raised regarding bid evaluations.

The Commission should direct USAC to provide guidelines – not bright-line rules – about when an applicant should restart the competitive bidding process. First, the Commission asks how it can provide guidance to reduce confusion about when an applicant is required to restart the competitive bidding process after making changes to FCC Form 470 or related requests for proposals (RFPs).[19] Many initial comments submitted on this issue support the need for clarification about the types of events (commonly referred to as major or cardinal changes) that would require an applicant to restart the bidding process after posting a Form 470/RFP.[20] Likewise, we generally agree that additional clarification and examples from USAC about what constitutes a material or cardinal change to FCC Form 470 or related RFPs would be helpful for applicants as they navigate a potentially complicated bidding process. We also agree with the Commission, however, that the question of whether a change would result in a new bidding

[18] *See Further Notice* ¶¶ 49 – 59.

[19] *Id*. ¶ 53.

[20] *See* Comments of E-rate Provider Services, LLC, 3; IOB Comments at 6.

process "is often a fact-specific inquiry."[21] Accordingly, while we agree that USAC should provide examples of the type of instances in which an applicant may need to restart the bidding process we caution that, in doing so, it should not create bright-line rules that remove the "fact-specific" element as recognized by the Commission from any of USAC's future inquiries or application review process. Rather, any examples USAC provides should act as guidelines to assist an applicant if it faces a similar situation, and acknowledge that the analysis remains a subjective, fact-based inquiry with flexibility afforded to applicants. Additionally, we think it would be especially helpful for applicants if USAC provided detailed explanations (including its analysis) for deeming certain changes to be material, thus prompting an applicant to re-file Form 470. We would encourage USAC to provide this information as part of E-rate training to applicants, but especially in the reason it provides for a denied funding request. Such detailed explanations would provide the applicant an opportunity to understand and interpret USAC's analysis of this issue more completely.[22]

USAC should provide illustrative examples of the types of evidence constituting a legally binding agreement and maintain flexibility for participants. Second, the Commission asks for comment about the types of examples that USAC should consider as evidence of a legally binding agreement an applicant must obtain prior to requesting E-rate funding.[23] To help participants better understand the scope of what constitutes "evidence of a legally binding agreement", we agree that it would be helpful for USAC to provide additional information about the types of documents (like board minutes) that would satisfy this evidentiary requirement. We

[21] *Further Notice* ¶ 54.

[22] Publicly posting USAC's appeal decisions would also help applicants to understand USAC's analysis, as suggested by SHLB in these reply comments below.

[23] *Further Notice* ¶ 57.

further suggest, however, that the Commission also disclose that any list of examples provided to participants clarifying this issue should not be exhaustive of the types of documents or items that USAC could ultimately accept. Interpreting the variety of ways in which an applicant and broadband provider entered into a legally binding agreement is a complex, often fact-based endeavor governed by a participant's own state law. If the Commission wishes for USAC to provide clarity or examples on this issue, we agree with NCTA that USAC should provide illustrative examples and not an exhaustive list.[24] Additionally, we agree with the State E-rate Coordinators' Alliance that the evidentiary requirement be retained with more flexible parameters.[25]

The Commission should not prohibit competitive bid evaluations that award points for categories not directly related to provision of E-rate services. Third, in its initial comments, Uniti Fiber suggests that the Commission prohibit applicants from awarding points for categories not related to the provision of E-rate services during bid evaluations.[26] Specifically, it cites an example whereby school districts evaluated criteria related to a bidder's residential broadband service offerings in the community as a whole.[27] We do not agree that the Commission should prohibit applicants from awarding points in competitive bid evaluations for such categories as long as price remains the primary evaluation factor. Except for the requirement on price, the Commission has allowed applicants to select the evaluation criteria that are important to them,

[24] NCTA comments at 7-8, suggesting that the Commission provide "illustrative guidance as to types of documents that would satisfy the rule" but to "make clear these examples are illustrative, not exhaustive, and that additional documentation may also be sufficient to satisfy the rule."

[25] SECA Comments at 29.

[26] Uniti Comments at 4-5.

[27] *Id*. at 5.

and the Commission should not change this long-standing policy.[28] Additionally, an applicant might award points when evaluating equipment and service bids for certain categories because it is required to give specific preferences under its state or local procurement laws. For example, state law or school boards might adopt procurement preference policies dedicated to engaging local or in-state businesses or designed to create opportunities for qualified minority and women owned businesses. Any prohibition on allowing an applicant the flexibility to evaluate its bids according to its own procurement processes could thus be in direct conflict with state and local law. For the reasons listed above, we urge the Commission not to adopt this suggestion.

III. THE COMMISSION SHOULD ELIMINATE THE FORM 486 AND SHOULD REVISE THE FORM 470

SHLB agrees with commenters asking the Commission to streamline the forms used in the E-rate program. Specifically, the Commission should eliminate Form 486 and should finish its proceeding to modify and clarify the terms used in the Form 470.

There is overwhelming support in the record for the elimination of Form 486.[29] No commenter advocated for the retention of the form. Therefore, the Commission should adopt its

[28] Uniti Fiber lists a number of examples of allowable additional bid evaluation criteria. *See* Uniti Comments at 4. We believe, however, that this list is only illustrative of the types of bid evaluation criteria an applicant may consider, and not an exhaustive list. It also suggests that allowing applicants to evaluate factors not directly related to the provision of E-rate eligible services is a new occurrence. Uniti Comments at 4, stating "[h]owever, in recent years some applicants have expanded bidding criteria beyond factors related to E-Rate goals and performance to include criteria wholly irrelevant to the program." However, in its sample bid evaluation matrix, USAC itself has listed certain factors as allowable that might not be directly related to the provision of E-rate eligible services, including those for local or in-state vendors and prices for ineligible services and products. USAC Website, Sample Bid Evaluation Matrix, available at https://www.usac.org/wp-content/uploads/e-rate/documents/samples/Bid-Evaluation-Matrix.pdf.

[29] American Library Association Comments at 8; Council of Great City Schools Comments at 2; GCI Comments at 9; Illinois Office of Broadband Comments at 6; NCTA Comments at 8-9; Ohio Information Technology Centers Comments at 4; SECA Comments at 41.

proposal to eliminate the Form 486, move the CIPA certification to the Form 471, and remove the requirement that applicants notify USAC that services have started.[30]

SHLB also agrees with SECA that the Commission should allow the Form 479, which certifies consortia members' CIPA compliance, to be a multi-year form.[31] Rather than requiring each consortia member to separately certify and file the Form 479 each funding year, consortia members could submit a Form 479 that would cover a period of years, similar to the way in which multi-year Letters of Agency are collected from consortia members. This would greatly reduce administrative burdens on consortia participants without compromising compliance with CIPA requirements.

SHLB also agrees with commenters that the Commission should clarify the form 470.[32] In 2019 the Wireline Competition Bureau and the Office of the Managing Director sought comment on improvements to the Form 470 drop-down menu, but that proceeding was never concluded.[33] The Commission should now take action to clarify and simplify the terms used in the Form 470 drop-down menu, using common and consistent terms throughout the E-rate program forms and the ESL.

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[30] Because this change would move the requirement that consortia would have to collect CIPA certifications from their members earlier in the process, the Commission should allow applicants the time to transition to such a new rule.

[31] SECA Comments at 44-45.

[32] NCTA Comments at 8; SECA Comments at 40-41.

[33] *Wireline Competition Bureau and Office of the Managing Director Seek Comment on Improving FCC Form 470 Drop-Down Menu*, WC Docket No. 13-184, Public Notice, 34 FCC Rcd 8719 (Wireline Comp. Bur. 2019).

IV. THE COMMISSION SHOULD CAREFULLY CONSIDER WHETHER PRODUCT DEMONSTRATION RULES ARE NECESSARY

The Commission is also seeking comment on whether additional guidance is necessary regarding product demonstrations and whether product demonstrations are allowed under the Commission's gift rules.[34] SHLB welcomes this question because it had asked the Commission to address this issue previously.[35] A product demonstration is a "test drive" of equipment for a limited period of time and is not a "gift": it is a normal sales practice that supports informed and cost-effective decision making, and that has long been known to both USAC and the Commission.

As an initial matter, SHLB would note that product demonstrations are important to a school or library's ability to judge a product or service. Without a product demonstration, the applicant may not be able to judge the cost-effectiveness of a competing bid that uses a different brand of equipment. A bid that includes equipment that turns out to be incompatible with the applicant's existing network would not be cost-effective no matter how low the cost, and no reasonable applicant would risk that outcome. Thus, the product demonstration is essential to an informed assessment of the bids.

In addition, the Commission has clarified that service providers can provide information about their products, including demonstrations, both before and during the competitive bidding process.[36] The Commission has never changed that policy.

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[34] *Further Notice* at ¶ 59.

[35] *See* Letter from The Schools, Health & Libraries Broadband Coalition, the State E-rate Coordinators' Alliance, and CoSN – the Consortium for School Networking to Kris Monteith (Dec. 13, 2018) https://www.cosn.org/wp-content/uploads/2021/09/Letter-to-FCC-re-gift-rule-12.13.18-FINAL.pdf.

[36] Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18803, para. 92 (2010) (*Sixth Report and Order*).

Given this background, SHLB would urge the Commission to consider carefully whether any new rules are necessary. The *Further Notice* did not provide any evidence or examples of abuse of the product demonstration process and SHLB is not aware of any. The Commission should be wary of adopting new rules that do not take into account an applicant's needs[37] and imposing any additional recordkeeping requirements on schools and libraries without a demonstrated need for the rule.

That being said, if the Commission decides to preclude or impose any restrictions on product demonstrations, SHLB requests that the Commission announce its decision clearly and specifically, so that all program participants can know and follow its requirements; set a future effective date for its decision; and direct USAC to apply its decision prospectively only.

V. OTHER E-RATE PROGRAM IMPROVEMENTS

In addition to the issues listed above and in SHLB's initial comments, the Commission should also consider directing USAC to take steps to provide transparency and further streamline the program. First, the Commission should require that USAC make publicly available requests for review of its decisions. All appeals and waivers of USAC decisions submitted to the Commission are publicly available through the ECFS system, but there is no corresponding way for parties to review appeals made directly to USAC. It would benefit E-rate participants to see the types of issues that are being appealed, and the specific facts involved in those appeals, so that they may better understand how to successfully navigate the process. This could result in fewer funding denials and fewer appeals to USAC and to the Commission.

Another way to improve the E-rate program is for the Commission to direct USAC to implement a process to streamline review of applications involving multi-year contracts. In the

[37] For example, an applicant might require equipment through certain time periods (such as during student testing) to ensure that it works during times of increased capacity.

2014 *First Modernization Order* the Commission adopted a requirement stating "[i]n subsequent funding years covered by a multi-year contract, applicants will be permitted to use a streamlined application process that will be shorter, require less information from the applicants, and be approved through an expedited review process, absent evidence of waste, fraud, or abuse."[38] It is unclear that this directive was ever implemented.

The Commission should amend the Form 471 to include a checkbox clearly indicating that the funding request is based on a multi-year contract and then ask whether the funding request is for the initial year of that contract, which would indicate regular review applied, or was for the second or later years, which would indicate streamlined review applied. The Commission should establish a period of time, for example 60 days, in which USAC must act on all streamlined funding requests. USAC should be required to report the total number of streamlined applications received in a funding year and the dates by which they were reviewed. This information should be reported to the Commission and made publicly available.

VI. CONCLUSION

SHLB again commends the Commission for extending this opportunity to present ways to streamline the E-rate program. We hope that the suggestions we present in both our initial comments and in these replies can help the Commission achieve its goal and assist all participants, including smaller and more rural schools and libraries, to use E-rate funding for their connectivity needs.

[38] *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8945-46, ¶191 (2014).

Respectfully submitted,

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