



**Joint Comments of the
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION
And
STATE E-RATE COORDINATORS' ALLIANCE (SECA)
To the
FEDERAL COMMUNICATIONS COMMISSION
Pursuant to the Request for Comment on
FCC Form 470 and 471 Information Collection
Paperwork Reduction Act of 1995
83 FR 23677
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I. Introduction

The Schools, Health & Libraries Broadband Coalition (“SHLB”)¹ and the State E-rate Coordinators’ Alliance (“SECA”)² jointly submit these comments to propose improvements to the FCC Forms 470 and 471 (“Forms”) information collections and to ensure these forms comply with the Paperwork Reduction Act.³

Our organizations are uniquely qualified to provide this feedback and these recommendations. Many members file these Forms regularly and are intimately knowledgeable about the operational challenges in completing them. The combined organizations represent the entire array of E-rate stakeholders – schools, libraries and consortia filers who routinely file the Forms as well as service providers who must access these Forms in order to meaningfully participate in the E-rate program.

The Notice requested comments on the following matters:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Communications Commission (“FCC” or “Commission”), including whether the information shall have practical utility;
2. The accuracy of the Commission’s burden estimate;
3. Ways to enhance the quality, utility, and clarity of the information collected;
4. Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and
5. Ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

Our specific recommendations based on these factors follow.

¹ SHLB Coalition members include representatives of schools, libraries, telehealth networks, state broadband offices, private sector companies, state and national research and education networks, foundations, and consumer organizations. See <http://shlb.org/about/coalition-members> for a complete list of SHLB Coalition members.

² SECA is a national organization comprised of state E-rate coordinators generally representing state departments of education and/or state network entities. As E-rate coordinators, SECA members are responsible for disseminating programmatic information to E-rate applicants and other stakeholders in their respective states. SECA members are intimately familiar with the operational details of the E-rate program as they are called upon to respond to applicant questions on a daily basis and to facilitate applicant participation in the program. By serving in the field, SECA members are acutely aware of the impact of FCC rules and procedures on the E-rate process. SECA members have testified in both House and Senate hearings on E-rate issues and were also represented on the SLD’s 2003 Task Force for the Prevention of Waste, Fraud and Abuse.

³ 83 FR 23677 (May 22, 2018), OMB 3060-0806, “Notice and Request for Comments on Information Collection Being Reviewed by the Federal Communications Commission.”

II. Timing of Implementation of New Forms

SHLB and SECA have considered the timing and operational implications of incorporating the following recommendations. In order to provide sufficient lead time required for developing the systems to implement these recommended Form changes, we recommend the following approach for transitioning to the new Forms.

- The current version of the FCC Form 470 and Form 471 would be renewed and be used until June 30, 2019.
- The FCC should modify the FCC Form 470 and Form 471 and prepare formal instructions consistent with our recommendations and publish these draft Forms and instructions for comment in fall 2018.
- The new Form 470 and Form 471 and instructions should be submitted for OMB review and approval to be finalized by December 31, 2018.
- The new Form 470 should be developed in the online system to be available as of July 1, 2019 (for the FY 2020 application cycle), and the new Form 471 should be developed and available online by the first day of the FY 2020 filing window (estimated to be sometime in January 2020).

In order for the notice and comment opportunity under the Paperwork Reduction Act to be meaningful, we believe that the time line for modifying the Form 470 and 471 must take into account that a lead time is needed once OMB approves the forms in order to develop the online systems and implement the changes. If there is not a sufficient lag time between the date of OMB approval and when the forms must be available for use, interested parties will continually find themselves in the situation where the notice and comment period under the Paperwork Reduction Act does not provide an effective opportunity to submit input. This is because the systems development of the forms will have to begin well before the comment period under the Paperwork Reduction Act ends, in order to ensure that the forms are available online soon after the OMB approval is provided. Any comments received from interested parties will not receive the careful consideration that is deserved since there currently is not time built into the schedule to allow for the systems development work to incorporate any revisions that may be recommended by commenters.

III. Visual Depictions and Detailed Instructions of Forms Must Be Available in Advance for Meaningful Public Comment.

A. Overview

The information collection submitted to OMB for renewal is incomplete because it does not contain actual form screen shots and comprehensive, detailed form instructions. The Paperwork Reduction Act Guide specifies that for electronic forms, screen shots of the entire form are required to be submitted for approval.⁴ The definition of “Information Collection” includes not only the forms, but also the instructions for completing forms.⁵ These documents must be subject to the notice and comment provisions of the Paperwork Reduction Act. Providing a list of the general information that will be collected, is insufficient to enable stakeholders to provide constructive feedback. Further, because no form instructions have been submitted for approval, interested parties are left to rely on non-comprehensive sporadically issued guides and unofficial News Briefs released by the E-rate program Administrator⁶ on a piecemeal basis. As a result, and as a matter of law, the

⁴ United States Office of Personnel Management’s Paperwork Reduction Act (PRA Guide, Version 2.0 (4/27/2011). Section 3.6 specifies:

Every new ICR (Information Collection Review) submitted to OMB for PRA approval requires an OMB Form 83-I, Paperwork Reduction Act submission. ...

Along with the 83-I, a number of documents need to be submitted to OMB for PRA approval. The documents are described below:

1. Proposed information collection instruments along with the appropriate Public Burden Statement, and any additional forms, documents, pamphlets issued with the information collection. *If this is an electronic application, you must provide screenshots of the entire form.* (Emphasis added).

⁵ The PRA regulations are replete with references to instructions that should accompany forms. See, e.g., 5 C.F.R. § 1320.3(b)(1) in which “burden” is defined to include the review of instructions for completing an information collection; §1320.3 (c)(1) in which “Collection of Information” is defined to include instructions; §1320.7, in which the responsibilities of the Agency Head and Senior Official designated to fulfill the PRA requirements specify that the official must ensure that the proposed information collection *and related instructions* are available for interested members of the public to access and review.

⁶ The Universal Service Administrative Company (“USAC”) is the administrator of all universal service support mechanisms and the Schools and Libraries Division (“SLD”) is responsible for administering the E-rate program.

purpose and intent of the Paper Reduction Act and its requirements of prior notice and opportunity for comment are not met.

B. Background of Form 470 and 471 Changes

The original version of this information was submitted for emergency review on May 7, 2015 for approval by July 1, 2015.⁷ This online form was developed in the legacy online filing system of the E-rate program administrator's website. Due to the emergency authorization request, the time period for submitting any comments was severely truncated and in essence denied any realistic opportunity for comments to be incorporated into the form. The May 2015 submission also failed to include any instructions to the forms, which was a departure from prior OMB submissions which always included both forms and instructions. The information submission was limited to a table of field descriptions with the disclaimer that they were not the actual forms that the applicants would see online.⁸

The next iteration was submitted for approval in August 2015, seeking approval from January 1, 2016 through December 31, 2018.⁹ Again, the identical information collection mirrored the previous submission, composed of a table of field and containing the same disclaimer that the form fields were not a visual representation of what applicants will see. Again, no instructions for how to complete the form were provided to OMB by the FCC or the E-rate Administrator.

In fact, between the 2015 and 2016 identical OMB submissions for Forms 470 and 471, the entire online filing interface underwent a metamorphosis to a new platform that went into effect on or about July 2, 2016 for

⁷ 80 FR 5961 (May 7, 2015); ICR Reference No. 201504-3060-027. See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201504-3060-027/

⁸ The submission stated: "Note: This is a representative description of the information to be collected via the online portal and is not intended to be a visual representation of what each applicant will see)."

⁹ 80 FR 48102 (August 11, 2018). ICR Reference No. 201510-3060-011. See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201510-3060-011.

Form 470¹⁰ and February 3, 2016 for Form 471.¹¹ Yet, the same table of fields for both forms, without any instructions for the new filing system, was submitted and approved by OMB.

Consequently since July of 2015 there have been no formally approved OMB instructions for the Form 470 and Form 471 nor have the actual Forms been submitted for approval.

SHLB and SECA are concerned that previous representations made to OMB suggesting that the instructions for filing the form are integrated into the online filing system are not entirely accurate. While there is some limited guidance, it is incomplete and insufficient. Indeed, USAC later published simple “User Guides” which are not instructions, but instead provide some limited guidance when navigating the forms, and even these are published outside of the OMB approval process.¹²

It is of paramount importance that actual form screen shots and comprehensive, detailed instructions for the Forms be provided to OMB for approval, and be subject to the notice and comment provisions of the Paperwork Reduction Act.¹³

¹⁰ The Schools and Libraries Division (“SLD”) published a News Brief on July 2, 2016 announcing the new filing platform was operational for submitting FCC Form 470 applications. See <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=629>

¹¹ SLD News Brief announcing FY 2016 Form 471 filing window dates – See <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=629>; SLD News Brief dated February 3, 2016 mentioned that there were “quick user guides for different applicant types” available online but none of these documents had been reviewed or approved by OMB, or made available previously for notice and comment pursuant to the Paperwork Reduction Act.

¹² See <https://www.usac.org/sl/tools/forms/default.aspx> for the FCC Form 470 User Guide and FCC Form 471 User Guides.

¹³ Indeed, other Universal Service program forms and instructions have complied with these requirements by including screen shots of the online forms and the accompanying instructions in the submissions to OMB, and therefore were subject to prior notice and comment. An illustrative list (that may not be exhaustive) of these filings includes:

Form # and Description	OMB Control #	ICR Reference #	Expiration Date
Rural Health Care Forms 460, 461, 462, 463, 465, 466, 476 – Form and Instructions	3060-0804	201606-3060-028	09/30/2019
Lifeline Forms 497, 5629, 5630, 5631 – Form and Instructions	3060-0819	201711-3060-002	pending
Telecommunications Reporting Worksheets Forms 499-A and 499-A – Forms and Instructions	3060-0855	201709-3060-015	12/31/2020
FCC Form 481 54.313 / 54.422 Data Collection Form – each screenshot of the online form and detailed narrative instructions	3060-0986 3060-0819	201804-3060-012	07/31/2021

C. FCC Forms Form 470 and 471 as They Relate to the E-rate Productivity Center

It is impossible to address the PRA questions in the Federal Register Notice without also discussing the manner in which the forms appear and must be completed in the online filing platform, known as the E-rate Productivity Center (“EPC”). This is because the online platform is the means by which the information is submitted.

The efficiency of these forms, one of the core principles of the Paperwork Reduction Act, has been significantly degraded due to the architecture of the new online filing system. The new system now relies on a menu of options for each data field, and a selection must be made for each field. Each drop-down menu choice, in turn, is used by the SLD to verify that the applicant complied with program requirements to qualify for E-rate funding. This approach is rife with traps for unsuspecting applicants who try in good faith to complete their forms to the best of their ability but are hindered by the lack of instructions or even the system architecture itself.

While some of these “growing pains” within the EPC system have been resolved by various system upgrades and user experience acquired from year to year, there remain fundamental limitations and problems in the Form 470 and 471 online filing systems that adversely affect applicants and jeopardize their ability to successfully file and obtain E-rate funding. These shortcomings are discussed below and recommendations for resolving these problems are provided. Our recommended changes are vital to enhance the quality, utility, and clarity of the information collected, to reduce the burden of the information collection on the applicant and ultimately help ensure the success of the E-rate for applicants, service providers and the SLD.

The E-rate program must comply with the same requirements and procedures that govern submission of the above listed forms and information collections for other universal service support mechanisms.

IV. FCC Form 470 Specific Comments and Recommendations

A. Category 1 Drop-Down Menu Options Must Be Revised to Accurately Describe Internet Access Service Options.

None of the actual service request descriptions in the Form 470 drop-down menu are set forth in the information collection – just the vague reference that the user is required to provide a description. In fact, there is no mention of predefined options being included in a drop-down menu format. Consequently these menu options and associated instructions were developed outside of the PRA process and interested parties did not have prior notice and opportunity for comment. In Funding Year 2018, the instructions for the Internet service drop-down options were changed without any PRA review; caused a great deal of confusion, and, jeopardized applicants' E-rate funding approvals. Had the FCC not intervened to direct that SLD hold applicants harmless because of the poorly worded and/or defined options there very well could have been funding denials due to these changes.¹⁴

Additional changes to the FY 2019 Form 470 drop-down service menu for Category 1 were implemented but they do not resolve the underlying confusion and deficiencies that stem from the FY 2018 changes. Unfortunately, there likely will be funding denials in FY 2019 unless the FCC again intervenes to provide relief.

The core problem relates to the options for requesting Internet service bids. The FY 2015, 2016 and 2017 versions of the Form 470 included "Internet Access & Transport Bundled" and "Internet Access: ISP Service Only." While not entirely self-explanatory, most applicants understood that if they wanted to purchase an Internet service, they should select "Internet Access & Transport Bundled." The "Internet Service: ISP Service Only" was reserved for purchases of Internet when the transport circuit was a separate and distinct service that was separately bid or provided by a different service provider.

¹⁴ <https://www.fcc.gov/document/fcc-guidance-usac-e-rate-competitive-bidding-rules-fy-2018>.

For FY 2018, after the Form 470 application process began and some Form 470s had been submitted, the SLD modified the instructions for these service requests and directed that “Internet Access & Transport Bundled” option was to be used only for bundled Internet when the transport medium was not leased lit fiber. If the transport medium was leased lit fiber, applicants were directed to use the Leased Lit Fiber drop-down menu option.¹⁵

This directive greatly complicated rather than simplified the filing process and created widespread confusion. Applicants who wanted to purchase a bundled Internet solution and who did not know whether the transport medium was fiber or non-fiber based could no longer simply select the Internet Access & Transport Bundled option. They were required to select this option **and** select the Leased Lit Fiber option and explain in a narrative text box on the online form that the Leased Lit Fiber selection was meant to request bids for a fiber based bundled Internet service.

Because this new instruction was not developed through the OMB approval process, applicants were not properly informed of this change and did not have an opportunity to provide input before it was adopted. Applicants were confused and did not understand the new requirement. Likewise, service providers were confused and did not understand whether the leased lit fiber selection on the Form 470 meant that the applicant sought bids for fiber-based circuits or whether applicants sought bids for a lit fiber based bundled Internet solution. If an applicant sought bids on both fiber-based circuits and a lit fiber-based bundled Internet solution, the explanation in the Form 470 narrative box became even more confusing, both for the applicant

¹⁵ In an August 22, 2017 News Brief, SLD explained that the following changes were made to “simplify” the Form 470 process:

“Use the “Internet Access and Transport Bundled” drop-down option when they are seeking bids for managed services provided over third party networks that include commercial Internet Access service, other than Leased Lit Fiber (e.g., DSL). Reminder: Applicants interested in considering proposals for a Leased Lit Fiber solution must request bids using the “Leased Lit Fiber” drop-down unless they have already requested bids using the “Leased Dark Fiber and Leased Lit Fiber” or “Self-Provisioned Network and Services Provided Over Third-Party Networks” drop-down options in EPC.”

attempting to explain the two services, as well as for potential bidders trying to determine what the applicant truly sought.

All of this confusion led to an outpouring of letters submitted to the FCC expressing concerns and chronicling the problems with the new Internet direction on the Form 470.¹⁶ The interested parties requested that the FCC prohibit the SLD from denying any requests for Internet funding based on an applicant's failure to select the Leased Lit Fiber service option and to direct the SLD to fix the drop-down menu for FY 2019. The May 1, 2018 letter from the FCC's Managing Director and Wireline Competition Bureau Chief directed SLD not to deny an FY 2018 application solely because the applicant chose the "Internet Access and Transport Bundled" or "Transport Only - No ISP Service" option on its FCC Form 470 and subsequently selected a fiber service on its FCC Form 471. SLD was further instructed to fix this problem for FY 2019 and to provide clear guidance on the drop down menu options.

¹⁶ Ohio Information Technology Centers' Ex Parte Notice, March 16, 2018, <https://ecfsapi.fcc.gov/file/103162630911319/Ex%20Parte%20-%203-16-18.PDF>;
State E-rate Coordinators' Alliance Ex Parte Notice, March 19, 2018, <https://ecfsapi.fcc.gov/file/1031987457367/SECA%20Ex%20Parte%203-19-18.pdf>;
Funds for Learning LLC Ex Parte Notice, March 19, 2018, <https://ecfsapi.fcc.gov/file/1032025814833/SECA-470-Drop-down-2018-03-18.pdf>;
CSM Consulting, Inc. Ex Parte Notice, March 20, 2018, <https://ecfsapi.fcc.gov/file/10320206503699/CSM%20Support%20for%20SECA%20March%2019%20%20Ex%20Parte%20Filing%2003202018.pdf>;
Kellogg and Sovereign Consulting Ex Parte Notice, March 20, 2018, <https://ecfsapi.fcc.gov/file/10320318512083/KelloggSovereign%20support%20for%20SECA%20Mar19ExParteFiling.pdf>;
EducationSuperHighway Ex Parte Notice, March 23, 2018, <https://ecfsapi.fcc.gov/file/10323724310523/ESH%20Ex%20Parte%203-23-18.pdf>;
Infinity Communications and Consulting Ex Parte Notice, April 18, 2018, <https://ecfsapi.fcc.gov/file/10418152648161/FCC%20Form%20470%20Drop%20Down%20Ex%20Parte.pdf>;
E-rate Central Ex Parte Notice, April 11, 2018, <https://ecfsapi.fcc.gov/file/104112237208403/Form%20470%20Menu%20Options%20Ex%20Parte.pdf>;
AdTec, Inc. Ex Parte Notice, April 9, 2018, <https://ecfsapi.fcc.gov/file/10409352828637/Support%20of%20SHLB%20ex%20parte%20letter.pdf>;
Schools, Health & Libraries Broadband Coalition Ex Parte Notice, April 9, 2018, <https://ecfsapi.fcc.gov/file/10409352828637/Support%20of%20SHLB%20ex%20parte%20letter.pdf>;
American Library Association Ex Parte Notice, March 29, 2018, <https://ecfsapi.fcc.gov/file/10329944216140/ALA-2018Mar29-Letter-Form471Extension.pdf>.

Despite the FCC’s directive to change the Form 470 drop down options to be clearer and more user-friendly, the FY 2019 Form 470 menu options, released on July 1, 2018, were only changed slightly and did not provide improvements as the applicant community had requested. The FY 2019 Form 470 drop down options are as follows:

Add New Service Request

Function *

Please select a value

Please select a value

- Leased Lit Fiber (with or without Internet Access)
- Internet Access and Transport Bundled (Non-Fiber)
- Transport Only – No ISP Service Included (Non-Fiber)
- Internet Access: ISP Service Only (No Transport Circuit Included)
- Leased Dark Fiber and Leased Lit Fiber
- Self-Provisioned Network (Applicant Owned and Operated Network) and Services Provided Over Third-Party Networks
- Network Equipment
- Maintenance & Operations
- Cellular Data Plan/Air Card Service
- Other

Notably, the Leased Lit Fiber option continues to govern both Internet and circuit requests where fiber is the transport medium. The Internet Access and Transport Bundled option applies only to services that are non-fiber based. The problem identified in FY 2018 has not been resolved for FY 2019. That is, applicants and service providers alike will again be unable to simply rely on the Internet Access & Transport Bundled option for all bundled Internet requests regardless of the type of transport medium (fiber or other). Unfortunately this continuing omission will perpetuate rather than resolve the confusion and misunderstanding that gave rise to the FCC’s May 1, 2018 “hold harmless letter.”

B. Category 1 Drop-Down Menu Options Must Be Revised to Accurately Refer to Category 1 Network Equipment and Maintenance.

The equipment and maintenance options need to be clarified that these are to be for Category 1 only, since these options are also available under Category 2. Applicants could easily be confused by the inclusion of these options under Category 1 without any clarification which in turn could lead applicants to mistakenly use

the Category 1 drop down menu for bidding their Category 2 internal connections and maintenance requests, and resulting in funding denials for competitive bidding violations.

C. Summary of Requested Changes to Category 1 Service Requests

For all of the reasons set forth above, SHLB and SECA respectfully request that the FY 2019 Form 470 defects be immediately corrected and the new Form should be designed to set forth clear, concise and technology-neutral service descriptions. Consistent with SHLB's April 9, 2018 ex parte letter, the following drop-down menu should be implemented:

CATEGORY 1 PROPOSED SERVICE REQUESTS	
TRANSPORT CIRCUITS	Leased Lit Fiber Circuit (without Internet access)
	Non-Fiber Circuit(s) (not including Internet Access), such as copper, satellite, fixed wireless, microwave, etc.
	Leased Dark Fiber and Leased Lit Fiber (must bid both)
	Self-Provisioned Network (Applicant Owned and Operated Network) and Services Provided Over 3 rd Party Networks (must bid both)
INTERNET ACCESS	Internet Access Bundled with Leased Lit Fiber Circuit
	Internet Access Bundled with Non-Fiber Circuit, such as cable modem, DSL, etc.
	Internet Access: No Circuit Included
	Internet Access: Cellular Data Plan/Air Card Service
OTHER	Category 1 Network Equipment of a Dark Fiber or Self-Provisioned Network
	Category 1 Maintenance and Operations of a Dark Fiber or Self-Provisioned Network
	Other

D. Category 1 Minimum and Maximum Speeds Should Be Fixed.

The current form has two fields that require applicants to specify the minimum and maximum bandwidth for their service requests. The available choices do not provide a continuous range of options and therefore are confusing when an applicant seeks to obtain bids for a bandwidth quantity that is not listed as an option.

Because the current choices are static and often do not align with the actual bandwidths being sought, applicants are then directed to use the narrative text box to provide the actual quantities/bandwidth speeds for which they are seeking.

Rather than having non-continuous ranges of bandwidth, SHLB and SECA recommend that there be specific boxes where applicants can enter the bandwidth amounts for which they are seeking proposals. Service providers will then clearly see the actual bandwidths being sought, rather than including this information in the narrative text box.¹⁷ Also the Form should re-institute the “or greater” option for applicants to select, thus allowing service providers to submit quotes for greater bandwidth than the specific quantity selected on the Form 470. This will allow for applicants to receive additional quotes all of which will be considered with the scope of the Form 470.

E. Category 2 Service Requests Should Be Combined into a Single Service Type and Should be Revised to be Consistent with the Eligible Services List.

The Category 2 section of the current Form 470 requires applicants to first select a “service type” which is subcategory of service/equipment. There are three options: Internal Connections (“IC”), Basic Maintenance of Internal Connections (“BMIC”), and Managed Internal Broadband Services (“MIBS”). Once the service type is chosen, the function must next be selected. The function is the specific component or services for which bids are requested. The functions for IC and BMIC are identical, as follows:

¹⁷ Alternatively, the specific bandwidth quantities should be eliminated and the information should simply be listed in the narrative text box. There is little value in requiring the selection of an inaccurate drop-down menu selection that must then be correctly described in a narrative text box. The drop-down menu is essentially useless, and the narrative text box should be used.

Add New Service Request

Service Type *

- ☒ Internal Connections
- ☐ Basic Maintenance of Internal Connections
- ☐ Managed Internal Broadband Services

Function *

Please select a value

- Please select a value
- Antennas, Connectors, and Related Components
- Cabling
- Caching
- Firewall Service and Components
- Racks
- Router
- Switches
- UPS/Battery Backup
- WAP
- Wireless Controller

The current format has two significant problems that need to be fixed.

First, the service type requirement should be eliminated because it is superfluous and has been used as a basis for denying E-rate funding. Applicants may incorrectly select the wrong service type and then are denied funding because of this inadvertent mistake. For example, if an applicant chooses IC and requests funding for software updates for the equipment, the software update may be viewed as BMIC. Unless the applicant also selected the BMIC service type on their Form 470, the software update BMIC funding will be denied as a competitive bidding violation. Likewise, some vendors offer multi-year licenses that are a combination of operating software and maintenance. Unless the applicant selected both IC and BMIC as service types on their Form 470, the multi-year license will be denied funding as a competitive bidding violation. (As an aside, the term “license” is not included in the 2018 Eligible Services List which made it even more difficult for applicants to guess whether a license belonged in IC or BMIC.)

A similar problem arises with respect to the MIBS and IC service types:

Add New Service Request

Service Type *

- ☐ Internal Connections
- ☐ Basic Maintenance of Internal Connections
- ☒ Managed Internal Broadband Services

Function *

Please select a value

- Please select a value
- Leased Equipment
- Existing Equipment

Both MIBS and IC may cover equipment that is purchased or leased. MIBS also covers the operation, management, and monitoring of IC either including or excluding the leasing of the equipment from the same vendor. An applicant may select IC as the service type but may receive a MIBS proposal in response to their Form 470. Unless the applicant also selected MIBS on their Form 470, they will be denied funding on their Form 471 if they submit a MIBS funding request.

These service type categories are not necessary and simply cause confusion and create unnecessary grounds for denial of funding. The reliance on Category 2 service types appears to be a holdover from the previous Two-in-Five Priority 2 years where applicants could seek BMIC and MIBS every year but were limited to IC two out of every five years. The service type selection should be eliminated altogether from the Form 470 because it is no longer needed and adds unnecessary complexity and confusion.

Second, the following corrections and clarifications are needed to be consistent with the Eligible Services List:

- Software and Licenses must be added as an option to the drop down menu.
- Clarify that power cords are classified according to the equipment to which they are connected and are not connectors or UPSs.
- WAP should be revised to “Access Point in LAN or WLAN.”

F. Instructions for Uploading Request for Proposal Documents and Other Competitive Bidding Documents Should Be Clarified.

Currently, the Form 470 states the following with respect to RFP documents:

You must upload your actual RFP document. Uploading a document with a hyperlink to another website, including bid management sites, is not sufficient and can lead to funding denial.

This in-form guidance, however, is incomplete and does not address what applicants should do when the RFP is amended. The SLD has issued additional non-OMB approved instructions to applicants in News Briefs. The January 26, 2018 News Brief¹⁸ states:

¹⁸ <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=813>

All RFPs and RFP documents must be attached to the FCC Form 470.

You can issue an RFP or similar document in addition to the FCC Form 470. In general, an RFP is a formal bidding document that describes the project and requested services in sufficient detail so that potential bidders understand the scope, location, and any other requirements for the project. However, we use "RFP" or "RFP document" generically to refer to any document you issue as part of the competitive bidding process that describes your project and requested services in more detail than in the fields provided on the FCC Form 470.

Generally, you are not required to issue an RFP unless your state or local procurement rules or regulations require you to do so. However, if you have issued or will issue an RFP or RFP document, you must upload that document to your FCC Form 470 in EPC.

RFP documents issued after an FCC Form 470 is certified must also be uploaded to your form. (Note that you cannot upload an RFP document if one was not already uploaded to the form before the form was certified.) To upload an additional RFP document after certification:

- From the **FCC Forms and Post-Commitment Requests** section of your landing page in EPC, use the search criteria provided to locate your form.
- Click the form nickname to access your form.
- From the **Related Actions** menu at the top of your form, choose **Add an RFP Document**.
- Follow the prompts to upload the RFP document and indicate which of your service requests are covered by the document.
- When you are finished, click the **Submit** button at the bottom of the page.

(Emphasis added).

This requirement is not found anywhere in published FCC policy, orders, E-rate Program regulations nor in any approved form instructions. The directive raises four significant concerns:

- Applicants who fully comply with the E-rate “open and fair” competitive bidding rules, and with state or local procurement rules to the extent applicable, have met the Program requirements. A new administrative requirement to upload documents in EPC should not be permitted to be established without prior notice and comment.
- Since the introduction of EPC in 2016, applicants, vendors, and FCC Commissioners have documented EPC system problems. The lack of EPC system availability, system errors, and problems with functionality of the EPC online system if applicants encounter problems uploading competitive bidding documents should not be used as a basis to deny applicants E-rate funding due to a “competitive bidding violation.” Applicants should not bear the burden of proof to show EPC problems prevented them from full compliance on uploading and making competitive bidding documents for vendors in EPC.
- There is no way via the EPC online system for interested vendors to be notified of the uploaded RFP, or modifications to issued competitive procurements associated with 470 postings. Many large applicants use online procurement systems such as BidSync in order to ensure the integrity of the procurement

process. Contrary to other state and local competitive bidding on-line systems such as BidSync.com, the EPC online filing system does not provide any “push” notifications to alert prospective bidders that there has been a change in the procurement documents. Further, without a notice and receipt feature in EPC, there is no way for procurement officers to be certain that an EPC-uploaded amendment was actually received by interested parties.

- Most importantly, the failure to upload supplemental RFP documents has been cited as a competitive bidding violation and used to deny E-rate funding approval, even when the applicant can show that prospective bidders received actual notice of the amended RFP documents via email or other means. As long as the applicant can show that their procurement was fair and open, their funding requests based on the procurement should be approved.

SHLB and SECA request that the Form 470 instructions clarify that, consistent with the requirement to conduct a fair and open competitive bidding process, applicants should be permitted to notify interested bidders of RFP updates by posting these updates on publicly available procurement websites that may allow for confirmation of receipt of document, or emailing these documents to prospective bidders who have contacted the applicant to express interest in the procurement, and confirming receipt of document via email. Applicants should have the option, but not the requirement, to also upload the documents in EPC. Failure to upload RFP amendments in the Form 470 system should not be grounds for denying funding, or cause for future audit findings, especially when the system does not operate properly to accept these documents and does not notify interested bidders of the updates.

G. The Current Requirement to Extend the 28-day Bidding Period for RFP Amendments Should Be Based on State Law.

Separate and apart from the Form 470 application, the SLD issued a News Brief on February 9, 2018¹⁹ that discusses “cardinal changes” to RFPs and the requirement to re-start the 28-day bidding period:

In general, you should post a new FCC Form 470 if you make one or more significant changes that are outside the scope of your original project or service requests ("cardinal changes"). In some cases, you can explain those changes by posting a new RFP document to an existing form, but you will have to start a new 28-day waiting period and count the days yourself.

¹⁹ <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=815>

(Emphasis added). Funding has been denied to E-rate applicants that amended their RFPs and did not extend the deadline for responses because SLD concluded that the RFP amendment was a cardinal change and the bidding deadline should have been extended.

In fact, the concept of “cardinal changes” to **RFPs** is not mentioned in any FCC E-rate orders or regulations. Based on our research, it appears to be a concept based on federal contract law when modifications and amendments are made to existing contracts (not procurements). Whether such modifications are considered to be within the scope of the original agreement, and thus deemed to be a permissible “minor contract modification” or are so significant that they are deemed to be a “cardinal change” and therefore not within the scope of the original agreement is a federal procurement concept developed in case law.²⁰

Regarding contract modifications, the FCC has stated that ***it is a matter of state or local procurement law*** to determine whether an E-rate contract modification would be considered minor and therefore exempt from rebidding. Where state and local procurement laws are silent or are otherwise inapplicable, the FCC adopted the “cardinal change” doctrine under federal law.²¹

A similar approach should govern RFP amendments and addenda to determine whether the additional information constitutes a material change to the procurement so as to require cancellation of the procurement or extension of the deadline for proposals. In the absence of governing state law or local procurement regulations, federal procurement regulations may be consulted to determine whether an extension of time for responses must be provided. This is the same approach used for contract modifications when there is no governing state or local procurement provision. The federal regulations prescribe that setting the deadline for

²⁰ See, e.g., *AT&T Communications, Inc. v. Wiltel, Inc.*, 1 F.3d 1201 (Fed. Cir. 1993).

²¹ Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration, CC Docket No. 96-45, FCC 97-420 (released December 30, 1997) at Paragraphs 225 and 226.

proposals – including a decision to extend the deadline - is a matter of discretion of the contracting officer. The contracting officer is required to act reasonably and in a manner that fosters full and open competition.²²

In summary, the Form 470 and related instructions should be amended to prescribe that applicants should look to state and/or local procurement law to determine whether a RFP amendment requires the bidding deadline to be extended. In the absence of an applicable federal or state law, the applicant should have the discretion to decide whether it is reasonable to extend the deadline in order to ensure that there is full and open competition in the procurement.

H. The Form 470 and Instructions Need to Explicitly Direct Applicants to list Bid Disqualification Factors in the Form 470 or in an Accompanying RFP.

USAC guidance states that bid disqualification factors must be binary – yes or no – and must be set forth on the Form 470 and/or an accompanying RFP.²³ Although this is considered a fatal competitive bidding flaw should it not be followed, there is no instruction or “helper text” in the form to alert applicants of this requirement. This guidance should be incorporated within the online form in the section where applicants are permitted to describe their state or local procurement restrictions governing the form 470. Additionally, this requirement should be added to the official OMB-approved form instructions.

V. FCC Form 471 Specific Comments and Recommendations

A. Overview

The Form 471 filing system is composed of several different modules that require data entry of information by the user. Some of the records reside in the applicant’s online profile and are automatically

²² The agencies and courts who review these decisions will seek to determine whether time allowed was inconsistent with statutory requirements or otherwise unreasonable, or that it precluded full and open competition. See *Coyol International Group*, B-408982.2, Jan. 24, 2014, 2014 CPD ¶ 40 at 2; *National Medical Staffing, Inc.*, B-244096, May 22, 1991, 91-1 CPD ¶ 503 at 1.

²³ <https://www.usac.org/sl/applicants/step02/evaluation.aspx>.

incorporated into each Form 471 that is created. These records must be created in order to be able to complete and certify the Form 471 application. Each module has a series of data entry requirements, but they have not been explained in a formal instruction document and they have not been submitted to OMB for review and approval. This oversight should be corrected, and the FCC should develop module instructions that are submitted to OMB for approval. The construction of the system with no formal input from interested parties has resulted in an extremely complex system that is rife with burdensome and inefficient requirements. The following modifications are needed to improve the efficiency of the system, reduce redundancy, and reduce the burden on applicants.

B. Category 1 Funding Requests Should Be Revised to Eliminate Duplicate Information Requests and the Instructions for Completing the Form 471 Should Be Clarified.

There are multiple data points an applicant must complete for a Category 1 funding request that go beyond just the type of eligible service, the cost, and the service delivery location. There are questions about how the service is being used as well as other features such as upload and download speeds and whether or not firewall is bundled into the service. Some of these data points are unambiguous and therefore relatively easy to understand and complete. However, there are data points that are redundant and confusing to applicants that should either be eliminated or explained in such a way as to minimize their ambiguity.

For example, the applicant must designate a purpose for the type of service it receives.

Purpose ⓘ *

- ☐ Internet access service that includes a connection from any applicant site directly to the Internet Service Provider
- ☐ Data Connection between two or more sites entirely within the applicant's network
- ☐ Data connection(s) for an applicant's hub site to an Internet Service Provider or state/regional network where Internet access service is billed separately
- ☐ Internet access service with no circuit (data circuit to ISP state/regional network is billed separately)
- ☐ Backbone circuit for consortium that provides connectivity between aggregation points or other non-user facilities

Then, in a later screen, the applicant must answer the following questions:

Is this a direct connection to a single school, library or a NIF for Internet access? ? *

Note: If the request is for direct connections, you will be required to allocate the total number of lines (monthly quantity) among the recipients listed for this line item.

YES

NO

Is this a connection between eligible schools, libraries and NIFs (i.e., a connection that provides a "Wide area network")? ? *

YES

NO

These questions are redundant to the Purpose designation, are confusing, and the latter set of "yes/no" questions should be eliminated. For example, if a school or library has a data transmission circuit to a statewide network but does not receive funding for Internet Access, we believe the first question is problematic because it implies the applicant is receiving Internet Access when that is not accurate. We have found that if an applicant answers "No" to both questions, then during pre-funding review the Program Integrity Analysis team ("PIA") will change the answer for the first question to "Yes" if an applicant is seeking funding for a digital transmission service connecting to a statewide network. Consequently, there is no viable means for an applicant to answer these questions correctly as they now stand.

Furthermore, when an applicant answers "Yes" to the first question it is asked to allocate the number of lines among recipients of service. For the majority of applicants who answer "Yes" to the first question, the funding request is for a single line from a network hub to either an Internet access provider or to a statewide network. However, it has never been explained how a single line which ultimately carries broadband traffic for multiple schools or libraries should be allocated. Therefore, it appears that this question is not relevant and that an applicant should simply be able to designate "all" as the recipient of service whenever the designated purpose is one of the following:

- Internet access service that includes a connection from any applicant site directly to the Internet Service Provider
- Data connection(s) for an applicant's hub site to an Internet Service Provider or state/regional network where Internet access service is billed separately

- Internet access service with no circuit (data circuit to ISP state/regional network is billed separately)
- Backbone circuit for consortium that provides connectivity between aggregation points or other non-user facilities

The only time a specific entity address should be designated as a recipient of service is in a true last-mile or WAN configuration, which only falls under the following purpose:

- Data Connection between two or more sites entirely within the applicant's network

Alternatively, the FCC must issue clear and explicit guidelines on the terms and definitions of these data points and provide clear instructions on how to complete these sections. Otherwise, the reported data will continue to be flawed and inaccurate.

Finally, there are no specific guidelines on how to complete funding requests that include special construction, Category 1 equipment, and maintenance and operations, otherwise known as "Fiber Key Request" information. To date, the FCC and/or USAC have not issued public guidance on how to complete these sections on the Form 471, what the terms mean, and what information is needed and why, especially for special construction funding requests. Without this guidance applicants and service providers spend an inordinate amount of time and resources trying to interpret and second-guessing the nature of the information required. They have had to edit and submit revised data multiple times during PIA review. Proper guidance is necessary in the Form 471 instructions to reduce this significant burden and to improve the efficiency of this information collection. Likewise, there is a substantial amount of data requested during PIA reviews for special construction requests, all of which occurs outside of the PRA and OMB approval. Such data collection should be fully integrated into the approved Form 471 and instructions.

C. Category 2 Building Budget Information Should Be Integrated in the Form 471.

The Category 2 building budgets should be integrated into the Form 471 application. The Category 2 budget program caps the amount of funding available per eligible building. Although applicants are not allowed to receive funding in excess of their building budgets, there is no mechanism in the Form 471 filing system to

warn applicants that they may exceed their building budget. Such warnings would greatly assist applicants in properly completing their Form 471 applications, reduce the amount of pre-funding commitment review and questions that they must answer, reduce the prospect for receiving funding approval in excess of their building budget and then having to repay funds that may be disbursed in violation of Program rules.²⁴ Such a warning system needs to be incorporated within the Form 471 filing system, but should not prohibit an applicant from submitting a Form 471 funding request.

D. There Should Be an Accurate Original and Approved Version of the PDF of the Form 471 Made Available to Applicants and Service Providers.

The existing online filing system enables applicants to retrieve a complete copy of the Form 471 as originally filed. Changes to the form are frequently made through the pre-funding commitment review process; however, there is currently no mechanism to retrieve a complete copy of the approved Form 471 unless the applicant prints out each page of the filing in the online system. This is quite inefficient, time consuming and burdensome. Some complex Form 471 applications number hundreds of pages and require a significant amount of time to print each screen individually.

Applicants frequently need to access the data on their Form 471 as approved, in order to request additional changes that occur after funding. They also need to retain a record of this form as part of the FCC's record retention requirements. This is a basic functionality that must be implemented in the online platform in order to improve the efficiency and minimize the burden on applicants.

²⁴ When applicants apply for funding that exceeds their building budgets, the review of their application is more complicated and time consuming. PIA must notify the applicant that they have exceeded their budgets and obtain the applicant's feedback on which equipment/services should be reduced to be within the allotted budget. The requested "warning" notification could alleviate some of this issues prior to the applicant's completion of their Form 471 application and facilitate more efficient processing of applications.

E. Improvements Are Needed to the EPC “Manage Contracts” Module.

This is the module for providing information about each contract that the Applicant has entered into for an E-rate service and/or equipment purchase. Historically, this information was reported in the Block 5 funding request itself. In EPC, the applicant can create a one-time record of a contract and this information is drawn into the FCC Form 471 funding request. However, at issue is the fact that contracts themselves are not static and can be subject to many changes and the a completed contract record cannot be edited Because of their inability to edit contract records, applicants are forced to either report inaccurate data on their Form 471 applications or create multiple contract records for the same contract, leading to a confusing, burdensome, and unnecessary review process simply as a result of the incomplete and flawed design of the EPC business process.

If USAC is required to collect contracts, then there should be a business process written that allows for parent contracts to be associated directly to contract changes through amendments, addenda, and/or change orders, depending on the structure of the contract. The current approach places an onerous burden on applicants to respond to the same or similar PIA question year after year to produce all of the contract documents including the amendments, addenda, extensions, etc. This fact often leads to USAC needing more time to review the funding requests and corresponding additional time for applicants in answering questions that could have been addressed by simply editing the record. These outcomes are contrary to the third goal announced in the July 2014 E-rate Modernization Order of “making the E-rate application process and other E-rate processes fast, simple, and efficient.”²⁵ Resolving this problem would facilitate achievement of this goal.

We ask that the following changes be made to the contract module within EPC to simplify the process and better ensure accurate reporting of data:

1. Allow for a record to be edited or modified in such a way that historic data and changes are captured and displayed;
2. Allow for additional documentation, such as contract amendments, addenda, change orders and other modifications to be uploaded at any point during the life of the contract;
3. Provide a narrative field to capture applicant comments or explanatory notes; and

²⁵ Modernizing the E-rate Program for Schools and Libraries, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99, WC Docket No. 13-184 (Order released July 23, 2014) at Paragraph 55.

4. Allow for a change in service provider name and Service Provider Identification Number in the event of a merger or acquisition, where the name of the service provider changes, but the contract remains the same.

F. The “Manage Connectivity” Module Should Be Eliminated to Avoid Redundancy.

This is the module for providing information about the current bandwidth speed connecting each building and the sufficiency of Wi-Fi in each building. This information is already collected inside the Form 471 application, and therefore, is redundant. The separate connectivity questions module should be eliminated altogether as unnecessary.

G. The Amount of Time to Complete Form 471 Should Be Modified to Reflect Current Time Requirements.

When comparing the historic FCC Form 471 Block 5 funding request prior to Funding Year 2015 when applicants were allowed to submit Item 21 Attachment information in a format of their own choosing and the current requirement to enter funding request line item detail directly into the Form, it is indisputable that the amount of time required to collect and enter this information is so much more substantial that OMB should revisit the estimated time burden for completing this form.

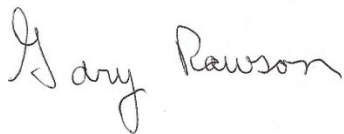
VI. Conclusion

SHLB and SECA respectfully request that the FCC modify the Form 470 and Form 471 applications, allow for proper notice and comment periods as required by the Paperwork Reduction Act, reassess the time and burden required for completing these forms which should include the completion of all EPC modules as well as the Forms themselves, create formal instructions for both Forms that are also published for notice and comment, and direct the implementation of online filing systems modifications consistent with the recommendations set forth herein.

Respectfully Submitted,



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