

**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 ILLINOIS DEPARTMENT OF CENTRAL MANAGEMENT SERVICES,  
A STATE AGENCY OF ILLINOIS REGARDING FUNDING YEAR 2016 PROPOSED  
ELIGIBLE SERVICES LIST FOR THE E-RATE PROGRAM**

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**Date: June 19, 2015**

Illinois Department of Central Management Services (CMS), a state agency of Illinois submits the following comments in response to the FCC 2016 Proposed Eligible Services List Notice for the E-rate Program for Schools and Libraries.

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## **1 Introduction**

The Illinois Department of Central Management Services (CMS), a state agency of Illinois, welcomes the opportunity to respond to the Proposed Eligible Services List for E-rate funding year 2016.

The comments given in this response reflect the views of the Department of Central Management Services (CMS), a state agency of Illinois. CMS manages the Illinois Century Network (ICN) the state network in Illinois providing high speed broadband to over 6000 community anchor institutions including K-12 schools and libraries.

We are providing comments in four areas (i) E-rate Eligibility for Networks constructed prior to E-rate funding year 2016 (ii) Special Construction (iii) Dark Fiber Lease versus Indefeasible Right of Use (iv) Maintenance of Leased Lit Fiber, Dark Fiber and Self Provisioned Broadband Networks.

In the below text, a positive funding commitment decision letter (FCDL) refers to a decision letter than approves and commits to the requested funding.

## **2 Contact Information**

To discuss any aspect of these comments in further detail, please contact

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## **3 Eligibility for Networks constructed prior to E-rate Funding Year 2016**

Our comments in this section relate to Notes (1) and Notes (2) on page 2 of the Draft Eligible Services List. We would like to clarify that the eligible costs are available for dark fiber Indefeasible Right of Use (IRU) and self-provisioned broadband networks if the dark fiber IRU or self-provisioned network was purchased or constructed by the applicant and paid for solely by the applicant prior to E-rate funding year 2016. We have the same question for dark fiber lease and additionally request confirmation that dark fiber lease payments in funding year 2016 would be E-rate eligible, if the school competitively bid a request for dark fiber lease (even if the dark fiber was constructed prior to E-rate funding year 2016).

We understand that the eligible cost items will need to be competitively bid. The following scenarios further describe the situation and for each scenario we request confirmation. For the purpose of absolute clarity, we provide multiple scenarios that are slightly different.

Following the scenarios we provide a suggested update to Notes (1) on page 2 of the Draft Eligible Services List.

**Scenario 1**

In 2010 a school determined their current broadband connectivity needs would be best met by building their own fiber optic network. The school thus constructed a network, purchased electronics and engaged with an outside company to perform the maintenance of the fiber. Thus the school owns the fiber network and the school IT staff manages and operates the electronics and an outside company maintains the fiber.

For funding year 2016, the school issues an RFP with an associated form 470 for the maintenance of the fiber. The school selects a vendor, following E-rate rules, then submits form 471 with the selected vendor. The school issues an RFP with an associated form 470 for certain electronic equipment that needs to be replaced for the fiber network. The school selects a vendor and then submits form 471. Can you please confirm the school can expect to receive positive Funding Commitment Decision Letters (FCDL) for the submitted form 471's. And can you please confirm the funding request for both form 470's is for category 1 services.

Since the school IT staff manages and operates the electronics, the school does not apply for E-rate reimbursement, since costs incurred by school IT staff are not reimbursable by E-rate.

**Scenario 2**

This scenario is the same as scenario 1, except the school IT staff decide that from funding year 2016, they no longer want to manage and operate the electronics. The school thus issues an RFP and associated form 470 for the management and operation of the electronics. The school selects a vendor, following E-rate rules, then submits form 471. Can you please confirm the school can expect to receive a positive FCDL for the submitted form 471. Can you also please confirm the funding request for the form 470 is for category 1 services.

**Scenario 3**

Scenario 3 is the same as scenario 1 and 2 except that instead of the school constructing a network in 2010, the school purchased dark fiber Indefeasible Rights of Use (IRU) for a period of 20 years in 2010. The school paid for the dark fiber IRU via one lump sum payment in 2010. Can you please confirm that the school can expect to receive positive FCDL's for the incurred costs as listed in scenarios 1 and 2.

**Scenario 4**

Scenario 4 is the same as scenario 3 except that instead of the school purchasing a 20 year IRU, the school entered into a dark fiber lease agreement whereby the school pays a monthly fee, covering the dark fiber lease and maintenance. For funding year 2016, the school issues an RFP and associated E-rate form 470 for dark fiber lease. Three vendors respond. Vendor A is the vendor that had already constructed dark fiber to the school in 2010. Vendors B and C would need to build dark fiber to the

school. The school performs a bid evaluation, and selects Vendor A following E-rate rules. The school submits E-rate form 471 with Vendor A specified. Can you please confirm the school can expect to receive a positive FCDL for the dark fiber lease cost as well as a FCDL for the costs incurred in scenarios 1 and 2.

### 3.1 Proposed Update

To the Notes (1) on page 2 of the Funding year 2016 Eligible Services List add:

**For leased lit fiber, dark fiber and self-provisioned broadband networks constructed prior to E-rate funding year 2016 E-rate support is available for Eligible costs incurred during E-rate funding year 2016. All Eligible cost items must be competitively bid.**

## 4 Special Construction

The definition of special construction in both the December 2014 E-rate Report and Order and the 6<sup>th</sup> E-rate Report and Order is: *“eligible special construction (or installation) charges for category one broadband services include costs for design and engineering, project management, digging trenches, and laying fiber”*

Notes (2) on page 2 of the draft 2016 Eligible Services List states *“Applicants may seek special construction funding for the upfront, non-recurring costs of deployment of new or upgraded facilities, including design and engineering, project management, and construction of network facilities.”*

The December 2014 order allows the school match portion of special construction to be paid monthly for a term of up to 4 years, and special construction is also eligible to receive additional FCC match with a state match. It is thus important to understand exactly what services and equipment is covered under special construction.

Our comment on special construction relates to what is included in special construction. Does special construction refer to eligible E-rate costs that cover all the one-time costs necessary to make the broadband service functional? This would mean for example one-time costs for electronics would be covered under special construction, even if there was no actual construction of a fiber network. A dark fiber IRU one-time cost would also be covered under special construction, even if the dark fiber was constructed several years ago.

Or does special construction refer only to those eligible costs related to actual network construction. This would mean one-time costs for electronics are not covered under special construction although are eligible E-rate costs, and a one-time payment for dark fiber IRU is not covered under special construction although is an eligible E-rate cost (if the dark fiber was not constructed specifically to provide the dark fiber IRU).

Our recommendation is that special construction covers all the one-time costs necessary to make the broadband service functional. This would include electronics, 20 year dark fiber IRU one-time costs as well as costs associated with constructing the network.

For the purpose of clarity, we provide the following question and confirmations and Scenario 5 with a confirmation.

**Special Construction – Question**

For lit service, dark fiber and self-provisioned broadband networks does special construction refer to all the one-time costs associated with making a broadband service functional or does special construction refer to only the construction component of the one-time costs ?

- a. If special construction refers to all the one-time costs associated with making a broadband service functional, please confirm the following is covered under special construction
  - i. One-time construction costs for lit service, dark fiber or self-provisioned networks
  - ii. One-time costs for electronics for lit service, dark fiber or self-provisioned networks
  - iii. A one-time payment to purchase a dark fiber IRU for a period of 20 years (and please assume the vendor does not need to do any new construction to provide the dark fiber IRU)
  
- b. If special construction refers to only the construction component of the one-time costs, please confirm the following statements:
  - i. One-time construction costs for lit service, dark fiber or self-provisioned networks is covered under special construction
  - ii. One-time costs of electronics is not covered under special construction but is covered under E-rate
  - iii. One-time costs for a dark fiber IRU (with a 20 year term), where there was no construction by the vendor specifically for the dark fiber IRU, is not covered under special construction but is covered under E-rate.
  - iv. One-time costs for a dark fiber IRU (with a 20 year term), where the dark fiber segment was constructed specifically to provide the dark fiber IRU is covered under special construction.
  - v. One-time costs for dark fiber IRU (with a 20 year term), where half of the fiber segment was constructed specifically for the IRU and the other half was not constructed specifically for the IRU, please confirm half of the dark fiber IRU cost is associated with special construction and half is not associated with special construction, but eligible under E-rate.

**Scenario 5**

A school is currently receiving 10Mb/s Internet access via a fiber connection. In E-rate funding year 2016 the school issues an RFP and associated form 470 for both lit service and self construction. The lit service specifies 1Gb/s is required. Five vendors respond. Two vendors offer lit service and three vendors offer construction of network. One of the two vendors for lit service is the current vendor providing 10Mb/s to the school (Vendor A). After a bid evaluation, where the school determines the most cost effective

solution, the school selects the current vendor, Vendor A, following E-rate rules. Vendor A however, has a one-time charge to cover the cost of upgraded electronics. Please confirm the one-time charge for the vendor electronics are considered special construction (and thus eligible for the school match portion to be paid for over 4 years and eligible for the FCC match to a state match).

#### 4.1 Proposed Update

Add the following Note to the Category 1 section of the Funding year 2016 Eligible Services List:

**Eligible special construction charges for category one broadband services include costs for design and engineering, project management, digging trenches, laying fiber and all one-time costs necessary to make the broadband service functional including, but not limited to, electronics and dark fiber IRUs.**

### 5 Dark Fiber Lease versus Indefeasible Right of Use

It is stated in the December 2014 order, that the term “leases” also includes Indefeasible Right of Use. It is common in the industry that a dark fiber IRU is sold for a 20 year term for a one-time payment at the start of the 20 year term. Maintenance charges are typically payable yearly by the purchaser of the IRU to the IRU owner. An alternative method of buying dark fiber, although less common than an IRU is to lease the IRU for a period, eg. 5 years, paying a monthly lease fee, that typically covers both the dark fiber lease and maintenance.

Could you please confirm that both forms of fiber purchase are eligible E-rate costs.

#### 5.1 Proposed Update

Add the following note to the category 1 section of the Funding year 2016 Eligible Services List:

**Dark fiber leases, including a one-time dark fiber IRU payment for a time period greater than one year, are eligible E-rate costs.**

### 6 Maintenance of Leased Lit Fiber, Dark Fiber and Self Provisioned Broadband Networks

In deployed networks maintenance charges for leased lit fiber, dark fiber and self-provisioned broadband networks typically include a scheduled or routine component and an unscheduled or non-routine component.

The scheduled/routine component includes, but is not limited to:

- Patrol of network
- Correcting potential hazards or deficiencies, for example, repairing or replacing damaged hand hole or man hole lids, missing cable markers

The unscheduled or non-routine component includes, but is not limited to:

- Emergency repair and restoration

- Maintenance of a “Call-Before-You-Dig” program and all required and related cable locates
- Relocation of fiber segments due to for example, a DOT road widening project

To be eligible for E-rate reimbursement it is understood that:

- Both routine and non-routine maintenance needs to be competitively bid via E-rate form 470 process
- For both routine and non-routine maintenance, only work actually performed would be eligible for E-rate reimbursement

For form 470 and 471 if the level of routine and non-routine maintenance activity was estimated could you please confirm a positive FCDL will be issued based on the estimated routine and non-routine maintenance activity. Only work actually performed will be invoiced.

## 6.1 Proposed Update

Add the following note to the category 1 section of the Funding year 2016 Eligible Services List:

**Maintenance includes but is not limited to patrol of fiber network, correcting potential hazards or deficiencies, emergency repair and restoration, locates, relocation.**

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