Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
2016 Eligible Services List	)	WC Docket No. 13-184
	)	

COMMENTS OF UNITE PRIVATE NETWORKS, LLC ON THE PROPOSED ELIGIBLE SERVICES LIST FOR FUNDING YEAR 2016

Unite Private Networks, LLC ("UPN") submits these comments in response to the Commission's Public Notice (DA 15-615) seeking comment on the Proposed Eligible Services List for Funding Year 2016 ("Proposed ESL") for the schools and libraries universal service support mechanism ("E-rate"). Our comments address the Notes included in the Digital Transmission Service and Internet Access section of the Proposed ESL as identified below.

INTRODUCTION

UPN applauds the Commission in its continued efforts to make high speed broadband available to every student, everywhere. As noted in the modernization proceedings to date, there are numerous obstacles that need to be overcome in order to reach this goal. We believe that the changes captured in the *E-rate Modernization Order* (FCC 14-99) and the *E-rate Second Modernization Order* (FCC 14-189) make huge strides toward reaching this goal. However, as with any change, implementation can be tricky. While we do understand that the *E-rate Modernization Order* focuses on streamlining the Eligible Services List and the E-rate process in general, more information is needed for Applicants and Service Providers to properly navigate these new waters and avoid lengthy Program Integrity Assurance ("PIA") Reviews and/or Appeals that will only add to the administrative burden of Applicants (as well as Service

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Providers, the Universal Service Administration Company ("USAC") and the Commission) - a result that would be counterproductive to the modernization process.

COMMENTS REGARDING NOTE (1)

Note (1): E-rate support is available for leased lit fiber, dark fiber, and self-provisioned broadband networks as described in the *Second E-rate Modernization Order* (FCC 14-189). Eligible costs include monthly charges, special construction, modulating electronics, equipment necessary to make a broadband service functional, and maintenance and operation charges. All equipment and service, including maintenance and operation, must be competitively bid.

After attending the Commission's recent Workshop relating to the substantial changes to the provisioning of broadband services contained in the *Second E-rate Modernization Order*, it was clear to us that there are many steps that must be taken before self-provisioning of fiber is considered eligible for E-rate support. While Note (1) gives some information about the numerous considerations that Applicants will need to make when determining whether to elect to utilize self-provisioning as an avenue to obtain the broadband they need to support the needs of their constituents, those Applicants who were not able to participate in the Workshop or are not aware of the information disseminated there do not have sufficient information to properly make a Total Cost of Ownership ("TCO") evaluation.

Specifically, it was made clear during the Workshop that Self-Provisioning should be the option of last resort used only when no other cost-effective option is available. As Note (1) is worded now, however, it appears that an Applicant can choose any of the options without considering the TCO evaluation during the competitive bidding process. The wording in Note (1) should be adjusted to reflect that Self-Provisioning is the option of last resort.

Additionally, the specific categories of maintenance and operation that should be included in a TCO evaluation, which were discussed during the Workshop, should be disseminated in either a Frequently Asked Questions ("FAQ") or Fact Sheet available on USAC's website. A reference to that webpage should then be included at the end of Note (1).

The following categories of maintenance and operation should be included in a TCO evaluation:

- <u>Costs associated with obtaining permission to utilize the city or state's right-of-way to install the necessary conduit and fiber</u>, which can include a one-time administrative fee and/or ongoing administrative fees that are paid on a yearly basis.[1]
- <u>Permitting fees that are paid to the city and/or state to complete the work within the right-of-way</u>. These fees are on top of the administrative fees assessed for use of the right-of-way and relate to specific construction activities.
- <u>Costs associated with restoring the right-of-way after construction is complete</u>. Many cities require a one year warranty on sod and other restoration work. This type of a warranty should be included in the TCO evaluation.
- <u>Costs associated with obtaining easements, both public and private</u>, which can include surveys, legal fees, and recording costs.
- <u>Legal fees associated with obtaining the needed agreements.</u> Many Applicants do not have in-house counsel who can navigate this process. As such, they will need to hire an outside attorney to assist them. Those who do have in-house counsel should take

[1] Right-of-Way fees can be a huge obstacle to overcome when building fiber in both rural and urban locations. For instance, one major Midwestern city charges a fee of $2.24 per linear foot, both up-front and on an annual basis, for all communications facilities located in the public right-of-way. For a 100 mile new fiber build to serve the metropolitan area, this equates to an upfront payment of $1.2 million and this same payment would be assessed each year that the facilities are in the right-of-way, regardless of whether it is used by a single entity or numerous entities. This fee is in addition to any permitting or other regulatory fees that would be assessed by the City.

into consideration the costs of utilizing them in the TCO evaluation. See comments to Note (3) below.

- Costs associated with construction variances. What happens in the event that an Applicant is forced to drastically change its construction plans? For instance, aerial construction is generally less expensive than underground construction. However, overcrowded poles and lengthy, unmanageable processes to attach to poles are increasingly proving to be insurmountable obstacles to completing aerial construction. Would Applicants have to pay for the entire variance in the event that they encounter such difficulties? If so, Applicants need to consider this in their TCO evaluation. If not, how will USAC ensure that self-provisioning is, in fact, the most cost-effective solution?
- Costs associated with ongoing locates (call before you dig) processes and fees. If not outsourced, this will require Applicant personnel to identify the physical location of the conduit and lines in compliance with the city and state specifications. If it is done by District personnel, the cost of utilizing this personnel should be included in the TCO evaluation. See comments to Note (3) below.
- Costs associated with relocating conduit and lines to allow for city improvements. This is an ongoing cost and should be given a yearly percentage (that is reasonable and defensible), which should be based on the surrounding areas development plans. In faster growing suburban areas, these costs can be substantial as roads and infrastructure improvements are planned and carried out.
- Costs associated with physically maintaining the conduit and lines from normal wear and tear and environmental elements.

- Costs associated with upgrading electronic equipment. The electronic equipment needed for fiber to function generally has a useful life of approximately 7 years. As such, any TCO evaluation of a period longer than 7 years should include a consideration for the cost of replacing this equipment.

As noted above, this detail should be included in either an FAQ page, Fact Sheet, or directly into Note (1). At a minimum, this detail is needed to assist Applicants and Service Providers in ensuring that they are fully compliant with the new regulations without the need for lengthy PIA question and answer sessions and/or appeals.

COMMENTS REGARDING NOTE (2)

Note (2): Applicants may seek special construction funding for the upfront, non-recurring costs of deployment for new and upgraded facilities, including design and engineering, project management, and construction of network facilities.

Note (2) should include an explanation about the changes to the early payment and amortization of special construction charges. Because the *Second E-rate Modernization Order* is rather long and extensive, more detailed guidance in the simplified ESL would be beneficial for Applicants and Service Providers in ensuring compliance.

Early Payment

Note (2) should be expanded to explain that special construction costs that are paid by the Applicant up to six months prior to the start of service can still be eligible for E-rate support. This will give both the Applicant and Service Provider clarity when utilizing this option to help Service Providers offset the cost of deploying fiber into new markets.

Amortization

The Commission permits the suspension of the amortization requirement for upfront costs that are in excess of $500,000 and allows Applicants to request reimbursement of the E-rate portion of an upfront payment in year one of the contract and then either pay their share of the upfront payment in year one or amortize it over a period of up to four (4) years. Although this helps Applicants and Service Providers offset the cost of deploying fiber into new markets, the ESL does not provide any reference to it. Additionally, there are many new rules that must be followed in order to exercise this option. A FAQ or Fact Sheet (housed on USAC's website with a link included in Note (2)) that provides a detailed explanation of the process Applicants and Service Providers must follow to exercise this option would be very beneficial to ensure compliance without drastically increasing the administrative burden of the Applicant or Service Provider.

COMMENTS REGARDING NOTE (3)

Note (3): Staff salaries and labor costs for personnel of the Applicant or underlying beneficiary are not E-rate eligible.

Note (3) should be incorporated into Note (1) or the connection between the two Notes should be more clearly identified. Our comments to Note (1) above provide more specific references to areas where these two Notes cross over. While staff salaries and labor costs are not eligible for E-rate support, these costs should be included in a TCO analysis that would be necessary for the Self-Provisioning analysis contemplated in Note (1). If USAC develops a Fact Sheet or FAQ page on its website, as suggested above, a TCO analysis category for staff salaries and labor costs should be included and that category also should be referenced in Note (3).

CONCLUSION

UPN agrees that the more simplified ESL will help Applicants and Service Providers identify products and services that are eligible for E-rate support. However, given the numerous improvements the Commission has made to the E-rate program, some additional information and guidance is needed so that Applicants and Service Providers are able to ensure that they are fully compliant with all E-rate regulations.

Dated: June 19, 2015.

Respectfully Submitted,

/s/ *Matthew Myers*
Matthew Myers, General Counsel
Unite Private Networks, LLC
120 S. Stewart Rd.
Liberty, MO 64068
(816) 903-9400
matthew.myers@upnfiber.com