

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ is pleased to submit its reply comments in the above-referenced proceedings. Eleven parties filed comments in response to the Commission’s Public Notice on the 2016 Proposed Eligible Services List (ESL) for the E-rate program,² and USTelecom respectfully submits this reply, addressing key issues from those comments.

I. The Bureau Should Confirm That Self-Provisioning is Typically an Option of last Resort.

The Second E-rate Modernization Order changed program rules to “equalize treatment of lit and dark fiber” and to allow qualifying applicants to self-provision broadband networks if – after a fair and open competitive bidding process considering commercial alternatives, including

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² Public Notice, *Wireline Competition Bureau Seeks Comment on Proposed Eligible Services List for the E-rate Program*, DA 15-615, WC Docket No. 13-184 (rel. May 21, 2015). Comments were filed on June 22, 2015 (*Notice*).

finished services – they can show that self-provisioning is the most cost-effective option.³ That additional flexibility, however, mandates additional care by applicants and heightened scrutiny by the Universal Service Administrative Company (USAC) to ensure they are making fully-informed and economic procurement decisions. This is especially important given the high capital costs and long commitments associated with dark fiber and self-provisioning.⁴

The Second E-rate Modernization Order provides that a Total Cost of Ownership (TCO) analysis must be conducted when evaluating self-provisioning.⁵ Unite Private Networks points out that Commission officials at the 2015 E-rate Fiber Workshop⁶ emphasized “that Self-Provisioning should be the option of last resort and used only when no other cost-effective option is available.”⁷ USTelecom supports Unite’s suggestion that the wording of Note 1 in the proposed ESL be adjusted to reflect that self-provisioning should be the option of last resort, and that it can be selected only after serious review of bids for finished and unfinished services and a thorough a TCO evaluation.

As Unite also suggests, the specific categories of maintenance and operation that should be included in a TCO evaluation should be spelled out in a FAQ or Fact Sheet posted on USAC’s website, with a link or reference included at the end of Note 1 of the ESL. In ESL notes and in

³ Second Report and Order and Order on Reconsideration, *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, 29 FCC Rcd 15538 at 15549 ¶¶ 30-54 (2014) (*Second E-rate Modernization Order*).

⁴ See Comments of CenturyLink on Petition for Reconsideration of Cox Communications, WC Docket Nos. 10-90, 13-184 (filed April 29, 2015) at 10-12 (calling for additional “cautionary guidance on the cost effectiveness showing for new construction”).

⁵ *Second E-rate Modernization Order* at ¶ 45.

⁶ Public Notice, *FCC Announces Initial Agenda for May 20 Workshop on E-rate Funded Fiber Build Projects*, WC Docket No. 13-184, DA 15-557 (May 8, 2015).

⁷ Unite Private Networks at 2.

USAC guidance, the Bureau should also reiterate that the evaluation for dark fiber or self-provisioning must provide a complete, apples-to-apples comparison to finished services, including any other traditional, eligible services such as Ethernet, MPLS, full and fractional T1s and T3s, and other services – not simply a comparison to lit fiber. Moreover, the notes should confirm that the TCO evaluation must include realistic assessments of *all costs*, direct and indirect.⁸

Another commenter, E-rate Provider Services, encourages the Commission to “clarify the present and future regulatory status of a self-provisioned WAN,” adding “that if the Commission does not require applicants who choose to provision their own WAN to charge and collect USF fees, service providers who ARE required to charge and collect USF fees will be at a significant disadvantage when attempting to compete for the contract.”⁹ It would be helpful if the Bureau could clarify that the cost of USF assessments should not be allowed to skew procurement decisions against the commercial providers whose contributions fund the E-rate program.

II. Applications Associated with Networks Constructed Before FY2016 Must be Reviewed with Particular Care.

The Commission need not address in the FY2016 ESL the individual requests of Illinois Department of Central Management Services for assessments of eligibility for various eligibility

⁸ Cox Communications has petitioned the Commission to clarify the cost-effectiveness assessment for proposed new construction must include a true “apples-to-apples comparison of their real costs versus purchasing provider-offered finished services,” while “taking into account all costs associated with the project...” The issue nevertheless is likely within the Bureau’s authority to provide this additional guidance with the FY2016 ESL. Petition for Reconsideration of Cox Communications, WC Docket No. 13-184 (filed Mar. 6, 2015) at 2-3.

⁹ E-rate Provider Services at 2, 4 (adding, “a ‘lit’ service from a Telecommunications Provider and a self-provisioned service from an Applicant should be on an equal financial footing, meaning if USF fees are charged on one, they should be charged on both”).

“scenarios” for previously constructed networks.¹⁰ Specific requests for clarification of eligibility are not properly addressed piecemeal by the Bureau in an ESL.

It is worth reiterating, however, that previously-procured services remain ineligible for E-rate support. The Second E-rate Modernization Order was intended “to close the high-speed connectivity gap between rural schools and libraries and their urban and suburban counterparts, and provide sufficient and certain funding for high speed connectivity to and within all eligible schools and libraries.”¹¹ It was not intended to fund services or equipment already budgeted and paid for.

The proposed FY2016 ESL reflects new eligibility for dark fiber and adds explanatory notes about leased lit and dark fiber and self-provisioned broadband networks in the “digital transmission and Internet Access” entry of the Category One section. The notes do highlight that applicants must seek competitive bids for network maintenance and operation and any other potentially eligible services and equipment. Any subsequent procurement for maintenance, operation, or updates of existing networks – including supplementing capacity or replacing components – must be genuinely competitive, with a thorough and comprehensive TCO assessment. Such an RFP must not be simply a token exercise to justify gaining E-rate support for procurement decisions already made outside of the E-rate program rules, or to off-load costs already committed by the applicant. USAC and the Commission should review such requests skeptically.

The Bureau should decline to add the Department’s overly broad proposed language on eligible costs associated with leased lit fiber, dark fiber and self-provisioned networks

¹⁰ Illinois Department of Central Management Services at 3-4 and 5-6.

¹¹ *Second E-rate Modernization Order* at ¶ 1.

constructed before FY2016.¹² It is more appropriate for those applicants to engage with USAC individually based on the particular facts of each situation before developing or conducting any RFP or submitting any Form 470. The Commission may need to open a proceeding to review many questions about the new fiber rules, including clarifying whether and to what degree a school district can modify previously committed procurements to offload costs onto the E-rate program.

III. Anything not Listed on the ESL Should be Presumed Ineligible.

Beginning in FY2015, the Commission has sought to simplify and shorten the ESL. Streamlining the ESL inevitably makes the ESL less definitive, as Funds for Learning suggests,¹³ but USTelecom believes the Wireline Competition Bureau is right to suggest that “rather than examining long lists of ineligible services, it will be more efficient for applicants to assume that any service or component not listed in the ESL is ineligible for E-rate program support.”¹⁴ The presumption should remain against eligibility whenever a service or component is not on the ESL, absent other specific guidance from the Commission or USAC.

IV. Clarifying “Duplicative Services” in the ESL Should be Unnecessary.

CRW Consulting worries that the Commission and USAC “may be taking an overly-rigid approach to the duplicative services rule.”¹⁵ It recommends that the Commission provide more clarity about eligibility of potentially “duplicate facilities.” USTelecom believes Commission

¹² Illinois Department at 4.

¹³ Funds for Learning at 1.

¹⁴ Public Notice, *Wireline Competition Bureau Seeks Comment on Proposed Eligible Services List for the E-rate Program*, DA 14-1130, CC Docket No. 02-6, GN Docket No. 09-51, WC Docket Nos. 13-184 (rel. August 4, 2014) at 3.

¹⁵ CRW Consulting at 1.

policy has been reasonably clear that “redundant and failover connections” are not eligible for E-rate support, even if secured to ensure redundancy and reduced risk of outage.

USTelecom agrees with CRW Consulting that Commission policy and E-rate rules do not preclude eligibility for a secondary connection to the same customer location if it is necessary to meet the broadband needs of the applicant and actively in use during the funding year. An applicant may legitimately find it most cost effective to add a second broadband connection to provide needed incremental bandwidth, especially if it found that bandwidth needs at a particular site grew faster than anticipated after the original procurement.

The Commission has defined “duplicative services” as those “that deliver the same functionality to the same population in the same location during the same period of time.”¹⁶ Each of the last nine editions of the ESL has stated that “[s]ervices that provide necessary bandwidth requirements, such as multiple T-1 lines, when appropriate for the population served and the services to be received are not duplicative.” CRW Consulting’s proposed additions to the ESL notes are not unreasonable but should be unnecessary. Given the Commission’s goal of streamlining the ESL, the clarification is probably unwarranted.

V. The ESL Must not Change the Rules on “Ethernet.”

Education Superhighway wants the Commission to eliminate support for technologies and services that Education Superhighway deems “outdated and duplicative.”¹⁷ It says the Bureau “should remove ATM, SMDS, frame relay, Fractional T1s and T3s, and Broadband over Power Lines” from the FY2016 ESL, because providing “flexibility to applicants” may

¹⁶ Second Report and Order and Further Notice of Proposed Rulemaking, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, FCC 03-101, 18 FCC Rcd 9202, ¶ 22 (2003).

¹⁷ Education Superhighway at 1.

mistakenly “leave[] many applicants with more than one seemingly correct option...”¹⁸ It also wants the Bureau to “remove the generic ‘Ethernet’ as an eligible service,” redefine “Lit Fiber service” as “Ethernet over Fiber,” and create a separate designation for “Ethernet over Copper” services. Each of these changes is wholly inappropriate.

Applicants appropriately have flexibility to choose the options that best meet their particular needs. Technology advances continue to extend the life and usefulness of copper facilities, providing greater speeds over existing copper plant. Copper-based service or older technologies may prove more suitable than other options available to applicants. Not every E-rate applicant is so large as to need fiber, and applicants must remain free to tailor their procurements to their individual needs.

Additionally, Commission policy must remain technology neutral. USTelecom and other commercial providers already have fiber to the vast majority of central offices across America, and Ethernet-grade services are rapidly becoming the standard for E-rate connectivity. But even if older technologies are falling from favor in the competitive marketplace, and are being supplanted by more cost-effective fiber-based alternatives, there is no need to exclude them from the ESL.

The Bureau should not remove “generic Ethernet” from the ESL or to “clarify[] that Lit Fiber service should be interpreted as Ethernet over Fiber.”¹⁹ Ethernet is generally understood to mean the end-to-end, finished service, including connection, maintenance, operation, and all provisioning to provide connectivity to the Internet. In contrast, lit fiber is merely dark fiber with lighting equipment installed, and operates as a point-to-point service only. Education

¹⁸ Education Superhighway at 1.

¹⁹ *Id.*

Superhighway thus has the definitions backwards, because “Lit Fiber” is not “Ethernet.”

Regardless, definitions and understandings reflected in the ESL are best a function of industry standards and marketplace practice, not the dictates of any single entity.

The Public Notice reminded parties that “[p]etitions for reconsideration of the Commission’s Second E-rate Modernization Order are pending,” and cautioned that “we do not invite requests for reconsideration of the E-rate Modernization Orders as part of this notice seeking comment on the proposed funding year 2016 ESL.”²⁰ Education Superhighway’s proposal to remove older services from eligibility is a call for change in rules, beyond the scope of the Bureau’s revision of the ESL.

VI. The ESL Cannot deny Support for Internet Access Under 25Mbps.

Education Superhighway also seeks untimely change of the rules by arguing that applicants should be denied E-rate support for service provisioned at speeds less than 25 Mbps, unless they can “establish no faster service is available.”²¹ Once again, this would be a material change in rule and is beyond the scope of the Public Notice or the Bureau’s delegated authority.

There are many thousands of E-rate applicants nationwide, in a vast range of sizes and circumstances. Within that universe are some small facilities that Education Superhighway’s policy would either abandon or insist be needlessly over-provisioned. There are special schools, for example, with fewer than a dozen students and specialty libraries that see fewer than a dozen researchers on a busy day. Institutions such as these cannot reasonably be compelled to lose E-rate support for service they deem ample, nor to over-provision service simply because they do

²⁰ Notice at n.1.

²¹ Education Superhighway at 2.

not meet the typical applicant profile. The Commission has recognized that applicants should have flexibility to determine their own connectivity needs.

Although the Commission's most recent Section 706 report designated 25 Mbps download/3 Mbps upload as the target speed for advanced services,²² that action did not constitute precedent for denying Universal Service support for lower speeds. For example, in Phase I of the Connect America Fund, the Commission provided support for broadband at 4 Mbps download/1 Mbps upload, while Phase II of the Connect America Fund will set a standard of 10 Mbps download/1 upload for supported broadband.

VII. Data Collection is Outside the Scope of the ESL Public Notice.

Education Superhighway argues that the Commission should “collect data from the relevant applicants and their service providers” if they are purchasing lower bandwidth connectivity.²³ Leaving aside both the unreasonable burden of such a requirement and the competitive nature of information involved, this is yet another policy argument that is not properly responsive to the Public Notice. Education Superhighway offered the same untimely comment on the FY2015 ESL last year, and the Bureau appropriately disregarded the request. It should do so again.

VIII. The Treatment of Firewall Services Should be Clarified.

Funds for Learning cites “confusion among equipment manufacturers, service providers, applicants and consultants when it comes to the eligibility of eligible firewalls, software and network management and monitoring functions.”²⁴ It notes that the Commission and USAC

²² *Id.*, at 2 & n.1.

²³ Education Superhighway at 2.

²⁴ Funds for Learning at 2.

actions, dating back to 2004, show that eligibility is limited to the firewall *functionality*. Many next generation firewall or security products, and future products yet to be introduced, are ineligible for E-rate support. In light of this history of confusion over firewall services, USTelecom agrees that the Bureau should “consider clarifying its intent when it comes to network security,” if not by modifying the ESL then by adding a glossary of terms to provide more detail.

IX. Applicants, Not Providers, Are Responsible for Determining Cost Allocation of Shared Voice and Data Circuits.

The Second E-rate Modernization Order clarified cost allocation requirements for circuits carrying both voice and data services.²⁵ The phase down applies fully to circuits used only for voice, including PRIs, SIP trunks, and VoIP provider circuits. For bundled voice and data services provided of a single circuit, cost must be allocated if the applicant is to preserve full eligible support for the data services. Education Superhighway suggests that, “to promote ease for applicants,” the ESL should be modified to stipulate that “[o]nly circuits with dedicated voice bandwidth should require cost allocation.”²⁶ That is not an unreasonable request, but paragraph 162 of the Second E-rate Modernization Order already makes that clear.

The Public Notice also sought comment on a proposal to add ISDN to the “eligible voice services” category, while at the same time continuing to list ISDN in the “digital transmission and Internet access services” category.²⁷ The Bureau stated that “ISDN also remains listed in the ESL as an eligible digital transmission service so that a cost allocation can be sought for the data portion of the service that is not subject to the voice phase down.” If the Bureau adopts its

²⁵ 29 FCC Rcd at 15602, ¶ 162. *See also Public Notice* at 2.

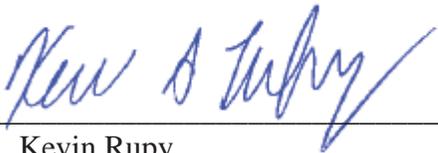
²⁶ Education Superhighway at 3.

²⁷ *Public Notice* at 2.

proposal to classify ISDN as both a voice service (subject to the phase down) and a data service (not subject to the phase down), it should find that the applicant – not the service provider – is responsible for determining the appropriate cost allocation. Because it is the applicant, not the provider, that controls how the ISDN service is used, and because the service provider has no ability to monitor the customer’s usage, the Bureau should make clear that the applicant is responsible for determining the cost allocation.

Respectfully submitted,

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July 6, 2015