

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)	
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Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
_____)	

**INITIAL COMMENTS ON THE ELIGIBLE SERVICES LIST FOR UNIVERSAL
SERVICE MECHANISM FOR SCHOOLS AND LIBRARIES FOR FY 2008
(FCC 07-130)**

E-Rate Central submits these Comments in response to the FCC’s Public Notice released July 27, 2007 (designated FCC 07-130) seeking comment on USAC’s proposed Eligible Services List (“ESL”) for Funding Year 2008. E-Rate Central is an independent firm providing E-rate application and consulting services to schools and libraries nationwide. It is also an active member of the State E-Rate Coordinators’ Alliance (“SECA”).

Definition of “Basic Telephone Service”

The FCC Public Notice announcing the draft ESL indicated that one of the major changes proposed was “...to treat Centrex service as a basic telephone service...with the intention of eliminating the requirement that applicants file a technology plan for Centrex service.”

E-Rate Central strongly endorses this change. Long before the advent of the E-rate program, schools and libraries had been using Centrex and other telephone services to make local and long distance calls over the Public Switched Telephone Network (“PSTN”). As an authorized technology plan approver, E-Rate Central sees many plans that, as a practical matter, address Centrex and related telephone services in only the most simplistic terms — or do not bother addressing them at all. We agree that there is no need to require E-rate applicants to include such services in their technology plans.

Besides redefining Centrex service, the draft ESL contains a much broader definition of “basic” service. Effectively, it would appear to eliminate the requirement that an applicant file a

technology plan as long as it was only applying for E-rate discounts on any local and/or long distance telephone services. Again, we concur with this proposal.

Currently, basic telephone service is defined as wireline or wireless single-line voice service. Single-line wireline service is often referred to as Plain Old Telephone Service (“POTS”), such as that typically found in a residence or very small business. Single-line wireless service refers to cellular or PCS service. By way of contrast, any multi-line telephone service, whether provided via Centrex or through a PBX switch or multi-line key system, was not defined as “basic.”

The FY 2008 draft ESL defines “Telephone Service” as any communications using the public switched telephone network. It then provides a list of such PSTN services, indicating they “...are ‘basic’ for purposes of the [E-rate] program and do not require a technology plan.” The list includes:

- 800 service
- Centrex
- Local phone service
- Long distance telephone service
- POTS
- Wireless telephone service (cellular and PCS)
- Voice mail services

Although the FCC’s announcement focused on Centrex, extending the definition of “basic” to include telephone services provided through a PBX or key system makes sense under the FCC’s longstanding policy of technical neutrality. From a user’s perspective, it makes little difference whether the PSTN is accessed via Centrex or through a PBX or key system.

In support of this position, E-Rate Central makes the following recommendations with respect to the final Eligible Services List for FY 2008:

1. The FCC should clearly confirm that both Centrex and other PSTN access services are defined as “basic telephone services” and do not require technology plans.
2. Recognizing that some applicants have previously lost funding for Centrex because they did not have an approved technology plan, we believe that the proposed change is long overdue and should be deemed retroactive. If the FCC means this change to apply only to the technology plan requirement beginning with FY 2008, that point should be clearly stated.
3. Assuming that the basic telephone service definition is meant to be applied to PSTN access through a PBX or key system, references to PRIs and trunk lines should be added to the list in the Telephone Service entry.

4. For the purposes of consistency and technical neutrality, the FCC should consider designating PBX and key systems as “basic” telephone equipment for which installation and maintenance would not require technology plans.

Specific Eligibility Issues

E-Rate Central recognizes that the ESL comment process is not meant as a forum for considering changes to E-rate eligibility rules. However, several ESL entries — and existing USAC funding decisions — appear to be based on interpretations of FCC eligibility rules that we believe deserve further FCC clarification.

User Training

As in the current ESL, on-site training is deemed eligible “...as a part of installation services but only if it is basic instruction on the use of eligible equipment...” As interpreted by USAC, only technical training of personnel charged with the operation or maintenance of eligible equipment, not of actual end users of the equipment, is considered eligible.

FCC appeal guidance (Henkels & McCoy decision, DA 06-1463), however, suggests a broader definition of eligibility that would include end-user training as long as it is not geared towards use “...in teachers' programs of instruction or for professional development.” If basic end-user training in the use of an eligible system — as opposed to staff development activities — is eligible, additional clarifying language is needed. We suggest that the applicable paragraph in the Miscellaneous section be modified to begin: “In addition, on-site training of users and network administrators is eligible....”

Two-in-Five Rule Issues

When the FCC initially established the Two-in-Five Rule in the Third Report and Order, it specifically excluded Internal Connections maintenance as a necessary recurring service. It has subsequently become apparent that certain other eligible, but recurring, services of a similar nature are inadvertently impacted by the Two-in-Five Rule. By slightly expanding the definition of “basic maintenance” in the ESL, the FCC may be able to correct the adverse effect of the Rule.

Software client access licenses that are often required to be purchased on an annual basis, for example, are eligible as Internal Connections. But, as explicitly addressed in the proposed ESL, such licenses are not currently eligible as Basic Maintenance. As such, client access licenses, while required every year, are only eligible for support in two of every five years. E-Rate Central believes that restriction is an unintended consequence of the Two-in-Five Rule. This oversight can be rectified simply by recognizing that client access licenses are necessary to the “upkeep of eligible equipment” and, thereby, can be logically considered an eligible component of Basic Maintenance.

Similarly, E-Rate Central recommends that the FCC consider the classification of lease payments on eligible equipment (in the second and subsequent years) as Basic Maintenance.

Equipment Warranties

Equipment warranties, which fall under the category of Basic Maintenance of Internal Connections, are typically purchased in yearly (or three-year) increments upon equipment installation or upon expiration of previous warrantees. As such, there is little likelihood that commercially standard warranty periods will coincide with the E-rate funding year. Unfortunately, the introduction to the Basic Maintenance section notes: “All requests in this category are for services to be delivered within the July 1 to June 30 Funding Year.” As a result, an allocated portion — and sometimes a significant portion — of annual warranty costs are deemed ineligible.

Additionally, since these types of warranties are typically associated with individual pieces of equipment, an applicant may have many such warranties. If each warranty is treated as a single contract, the applicant must then apply for — and allocate — each warranty as a separate FRN.

E-Rate Central recommends that:

1. A standard one- to three-year warranty purchased in connection with new equipment should be treated as an eligible portion of the equipment purchase, rather than as basic maintenance. Given the low cost of even a three-year warranty, relative to the underlying equipment cost, applicants should not be required to apply for an allocated portion of a standard multi-year warranty in subsequent funding years.
2. A warranty extension associated with specific pieces of equipment should be treated as a non-recurring basic maintenance expense, beginning, but not necessarily ending, within the associated funding year. On an ongoing basis, this would permit an applicant to receive full discounts of its equipment warrantees and to file for those discounts under one FRN.

The requirement “...for services to be delivered within the July 1 to June 30 Funding Year” would continue for general basic maintenance contracts covering a wide range of equipment (see also the additional comment #2 below).

Other ESL Suggestions

The following are a number of more minor clarifications which E-Rate Central believes should be reflected in the final Eligible Services List for FY 2008:

1. The discussion of Internet access funded under Telecommunications states that such bundling is acceptable if provided by an Eligible Telecommunications Provider, but “...that applicants must indicate that Internet access is being sought when filing FCC Form 470.” While USAC has suggested that applicants list such Internet services under

both Priority 1 categories, one interpretation of this statement could be that the associated Form 470 must indicate that the service is being sought under the Internet Access category. E-Rate Central believes that this would be a confusing requirement, particularly for BlackBerry-type data services that are provided only by telecommunications providers. Although it would require Internet providers to check both categories, we recommend that the FCC clarify that, at a minimum, such Internet services need to be listed under at least one Priority 1 category.

2. An eligibility criterion in the Basic Maintenance section indicates that: “the agreement or contract must specifically identify the eligible components covered including product name, model number, and location.” Although such information is often required during PIA application review, E-Rate Central believes that such a list of equipment should not be a mandated contract requirement. Particularly for larger applicants, the base of equipment that must be maintained is dynamic, changes to which would require constant contract modifications. Instead, we recommend that the ESL simply indicate that applicants should be prepared to provide a list of equipment to be maintained under the associated agreement or contract.
3. The entry on Digital Transmission Services¹ properly notes that components required as an integral part of a service, such as “reasonable installation costs,” are eligible for discount. To avoid potential disputes regarding facility usage and ownership, it would be helpful if the ESL indicated that associated installation costs may involve the construction of carrier-owned and maintained entrance facilities.

Respectfully Submitted by:



Winston E. Himsworth
Executive Director
E-Rate Central
625 Locust Street, Suite 1
Garden City, NY 11530
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¹ As a minor editing point, E-rate Central suggests that the final portion of the Digital Transmission Services entry be changed to read:

The telecommunications component of the following services are eligible for discount:

- distance learning;
- video service; and/or
- interactive television