

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

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

**REPLY COMMENTS ON THE FY 2009 DRAFT ELIGIBLE SERVICES LIST  
FOR THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE MECHANISM  
(FCC 08-180)**

E-Rate Central submits these Reply Comments in response to the FCC’s Public Notice released July 31, 2008 (designated FCC 08-180) seeking comment on USAC’s proposed Eligible Services List (“ESL”) for Funding Year 2009.

Separately, E-Rate Central intends to submit comments in response to the FCC’s Notice of Public Rulemaking (“NPRM”) released July 31, 2008 (designated FCC 08-173) seeking comment on proposed changes to the ESL for Funding Year 2009.

E-Rate Central is an independent firm providing E-rate application and consulting services to schools and libraries nationwide. It also provides E-rate support services for several states and is an active member of the State E-Rate Coordinators’ Alliance (“SECA”).

**Support for SECA Comments**

E-Rate Central strongly supports the Comments filed in this proceeding by the State E-Rate Coordinators’ Alliance. In particular:

1. *Definition of “basic telephone service.”* E-Rate Central recognizes that the definition of “basic telephone service” is a topic for discussion in the companion NPRM, but is concerned that decisions from this broader proceeding will not be rendered in time to affect rules for FY 2009. As an interim step, we urge the Commission to use the FY 2009 draft ESL proceeding to broaden the definition of basic telephone service to include all local and long distance services accessing the Public Switched Telephone

Network (“PSTN”). If only to assure technical neutrality, such a change would be consistent with the Commission’s action in the FY 2008 ESL to treat Centrex service as a basic telephone service. By eliminating the technology plan requirement, this would go a long way toward simplifying the E-rate application process, particularly for smaller applicants applying only for discounts on their local and long distance services accessed via a key system or small PBX. Such applicants are now being forced to develop somewhat trivial technology plans solely to meet existing E-rate requirements. Since the existing ESL is silent as to the “basic” nature of telephone services accessed through PBXs and key systems, such a definition could be viewed as a clarification of existing rules rather than as a substantive change.

2. *Eligibility of Internet2:* As the Commission’s rules are currently interpreted by USAC, Internet2 is treated as an ineligible Intranet rather than an eligible, public Internet. E-Rate Central agrees with SECA that Internet2 has become a public resource for schools and libraries. There is already legal precedent — the granting of common carrier status to the Iowa Network serving only educational and state governmental entities — for treating as “public” a service that is used only by an extensive community of interest. The FCC could clarify that Internet2 access is an eligible service simply by aligning the two Internet2 references in the draft ESL to indicate that only Internet2 membership dues, not “fees,” are ineligible. (As an aside, it should be noted that many K-12 schools are accessing Internet2 under affiliation agreements with local universities, and are not themselves charged membership dues.)
3. *User training:* E-Rate Central agrees that the ESL language regarding the eligibility of user training needs to be aligned with the FCC’s Henkels & McCoy decision (DA 06-1463).
4. *Two-in-Five Rule issues:* E-Rate Central agrees that software licenses for eligible equipment need to remain in effect if such equipment is to remain operative. To treat such licenses as Internal Connections, subject to the 2-in-5 Rule, rather than as Basic Maintenance of Internal Connections, which can be supported every year, appears inconsistent with the program’s objectives.

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. Ironically, we note that in the broad E-rate NPRM (FCC 03-323), issued prior to the enactment of the 2-in-5 Rule, the FCC asked whether technology plans should require that “...applicants analyze the cost of leasing versus purchasing E-rate eligible products and services.” As long as no more than two years of lease payments can be considered as eligible for discounts, there is little chance that leasing would be cost-effective for applicants qualifying for Internal Connections discounts.

5. *Equipment warranties:* E-Rate Central agrees that a minor exception should be made to the service delivery rules for recurring warranty costs to permit full eligibility of a year’s worth of service for warranty periods that typically are aligned with equipment installation dates, not precise E-rate funding years.

6. *Video-on-Demand servers:* E-Rate Central concurs with the comments filed by SECA and others that the categorical classification of VOD servers as ineligible would be inconsistent with the historic — and proper — funding of eligible server distribution capabilities, but not the ineligible video content storage and manipulation features. As currently written, the most likely effect of the proposed change would be to make sure that manufacturers of multi-function video servers take pains not to label their products as “Video on Demand” servers.
7. *Basic Maintenance contracts:* E-Rate Central agrees that the FCC should not mandate that Basic Maintenance contracts contain detailed lists of products covered or locations served — as long as such information is provided in the associated application documentation and/or provided to PIA upon request for review. Although this language has been part of the ESL for a number of years, our search of funding denial reasons over the past five funding years indicates that no applicant has been denied funding based on its failure to include product lists or locations in its contract.<sup>1</sup> This suggests that USAC has not been reviewing the details of maintenance contracts as a part of its normal review process. We also note that requiring such details in all maintenance contracts would be impossible for state master contracts that, to be consistent, might lead to new requirements for applicants to develop associated scopes of work (“SOWs”) when using such contracts. Overall, we believe that delving into contract specifics is a slippery slope that the FCC should avoid, and that this language should be removed.

## Other ESL Comments

The following are a few additional reply comments on issues raised by other parties commenting on the draft ESL:

1. *Form 470 listing requirements for bundled Internet access:* In its own comments on the draft ESL for FY 2008 last year, E-Rate Central made the following points:

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.

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<sup>1</sup> However, there may have been one or more post-commitment denials. E-Rate Central notes that the FCC has recently received an appeal of a USAC COMAD issue resulting from a reportedly deficient maintenance contract going back to FY 2004 (see Request for Review filed by Patton Boggs, LLP, August 18, 2008, on behalf of Solid IT Networks, Inc. and Aldine Independent School District at [http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520038548](http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520038548)).

There has been no clarification of this issue in the draft ESL for FY 2009, nor has there been additional guidance from the SLD on the necessity of listing certain Internet services (particularly bundled wireless offerings) under Telecommunications and/or Internet Access. We reiterate our comments of last year and again ask for FCC clarification.

2. *Intranet hosting*: E-Rate Central agrees with several commenters (Edline, ESPA, Funds for Learning, and NYS OCFS) that the proposed limitation on the eligibility of Intranet hosting is overly broad. Specifically, as suggested by Funds for Learning, we agree that the language be amended to read: "Funding will be available for web hosting services that reach the boundary of public Internet space."

Respectfully Submitted by:



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