

**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	)	
_____	)	

**INITIAL COMMENTS ON PROPOSED CHANGES TO THE ELIGIBLE SERVICES  
LIST FOR THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE MECHANISM  
(FCC 08-173)**

E-Rate Central submits these Comments in response to the FCC’s Notice of Proposed Rulemaking (“NPRM”) released July 31, 2008 (designated FCC 08-173) seeking comment on proposed changes to the Eligible Services List (“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”).

**Implementation Timeframe Issues**

Coincident with this NPRM’s release, the Commission also published and sought comments on the more conventional draft ESL for FY 2009 (FCC 08-180). The release of the 2009 draft ESL was consistent with the timing of prior drafts issued in recent years, all with accelerated comment and reply comment deadlines. Traditionally, draft ESLs have incorporated little more than format changes and minor clarifications, specifically devoid of substantive eligibility issues. Final versions of the ESL have recently been published in the October/November preceding the opening of the upcoming Form 471 application window.

E-Rate Central commends the Commission for initiating a broader inquiry regarding the possible eligibility of other E-rate services. The NPRM addresses many of the comments submitted in response to earlier ESL drafts that deserve full consideration. However, since these eligibility issues are more substantive, and the comment period is longer, E-Rate Central is concerned that the Commission may not be able to reach formal decisions on new eligibility rules prior to the

opening of the FY 2009 application window. If it cannot, E-Rate Central recommends that any additions to the ESL be deferred until FY 2010.

### **Financial Impact Studies and Eligibility**

As a general matter, E-Rate Central is concerned with proposals to expand the list of eligible services, regardless of merit, in an era of limited E-rate funding. Specifically, E-Rate Central recommends that no new products or services be made eligible, particularly as Priority 1, without a financial impact study. Such a study should include an estimate of the incremental demand for E-rate funding reflecting not only the current level of expenditures by schools and libraries on such services, but a projection of future requirements as applicants and service providers respond to the changing supply and demand incentives of E-rate eligibility.

Although there is currently sufficient funding for Priority 1 services, funding for Priority 2 is increasingly being squeezed. Priority 2 funding at all discount levels has not been available since FY 1999 (which, in hindsight, was an anomaly). Since that year, the Priority 2 funding threshold has reached down to 70% only once (FY 2003), and down to 80% one other time (FY 2005). In FY 2007, funding was provided down to 81%, but only with the addition of \$650 million in roll-over funds. Initial indications for FY 2008 suggest that, even with a \$600 million roll-over, Priority 2 funding may be available only down to 87%.

As E-Rate Central has discussed in the past,<sup>1</sup> three key trends are adversely affecting the availability of Priority 2 funding for all but the highest discount applicants. They are:

1. The demand for Priority 1 continues to grow. Every additional dollar committed to Priority 1 means one less dollar for Priority 2.
2. Demand for Priority 2 funds by high-discount applicants dropped for a few years preceding implementation of the 2-in-5 Rule, but then flattened. It is up again for FY 2008.
3. New SLD application review procedures, implemented in the aftermath of the FCC's *Bishop Perry* decision, have reduced the denial rate on funding requests.

Unless steps are taken to rebalance the supply and demand for E-rate funds, the addition of newly eligible products and services can only aggravate the shrinking availability of Priority 2 funding. Within a few years, it may begin to impact the availability of Priority 1 funding as well.

Although this NPRM was not designed as the forum for a detailed discussion of steps that might be necessary to rebalance the E-rate funding equation, it is worth noting that there appears to be only three basic options. In particular:

1. The nominal \$2.25 billion cap on annual E-rate funding could be increased to reflect inflation and/or new service needs.

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<sup>1</sup> See the E-Rate Central News of the Week for April 7, 2008, available at: [http://www.e-ratecentral.com/archive/News/News2008/weekly\\_news\\_2008\\_0407.asp#b2](http://www.e-ratecentral.com/archive/News/News2008/weekly_news_2008_0407.asp#b2).

2. Changes could be made to the program's rules and regulations to curtail demand. The Commission's implementation of the 2-in-5 Rule was one such attempt, but stronger measures may be needed. Consideration may need to be given, for example, to earlier recommendations of the State E-Rate Coordinators' Alliance ("SECA") or the SLD's own Task Force on Waste, Fraud, and Abuse, to reduce the maximum discount on Priority 2 services from 90% to 70-80%.
3. The addition of newly eligible services could be balanced by the elimination of other eligible services.<sup>2</sup>

In the absence of any financial constraints, E-Rate Central believes that valid arguments can be made for the eligibility of all or most of the new products and services addressed in this NPRM. Briefly, with regard to some:

1. Filtering, firewall, anti-virus/anti-spam products and services are necessary components of any modern Internet access network. Care must be taken, however, in making any of these services eligible as Priority 1 — a step that would have an immediate adverse impact (and one that would likely grow over time as features were added) on funding demand. A priority case can be made for considering filtering eligibility because it is currently an unfunded mandate for most E-rate applicants.
2. Text messaging on mobile wireless devices is, in function, virtually indistinguishable from e-mail. Indeed, many applicants believe text messaging is already eligible. If not, it should be. E-Rate Central believes that the financial impact of confirming the eligibility of text messaging would be negligible.
3. Because of bandwidth limitations, scheduling services for the use of video conferencing facilities appear to be integral to their use.<sup>3</sup> Indeed, it is not clear to us why this function is not bundled into standard transmission service charges. As such, scheduling services should be eligible.

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<sup>2</sup> A possible radical idea might be to make all Internal Connections basic maintenance ineligible. The arguments for doing so include:

- a. It would immediately reduce demand — over \$250 million in initial FY 2008 demand at 80-90%.
- b. It would eliminate a variety of E-rate contracting and warrantee problems.
- c. It wouldn't really take E-rate dollars away from E-rate applicants; it would just shift where the E-rate funding was being used.
- d. If applicants were not getting maintenance funding, they might be more judicious about what equipment they purchase.
- e. It would reduce what is probably the most vexing and subjective aspects of PIA application reviews by drastically cutting the number of cost-effective reviews.
- f. Most importantly — and this is an issue that has not really been well discussed — it would remove the bias to use third-party, rather than in-house, maintenance. One of the insidious aspects of funding third-party maintenance is that it has encouraged applicants to deplete their own technical staffs — often leaving no one (other than vendors) to help the smaller and poorer schools decide what technology they really need and how to use it.

<sup>3</sup> Not unlike, in years gone by, the role served by telephone operators providing access to limited long distance facilities.

4. Telephone broadcast messaging is a generally useful service which, in cases of emergency, can be critical. That said, E-Rate Central believes that messaging is essentially an application, and that making such a service eligible would set a dangerous precedent.
5. There is still a definitional problem with regard to dark fiber. Under current rules, “lit” fiber is eligible if and only if the fiber is lit by a service provider. However, “dark fiber” could mean either that the service is being used, but not lit by a carrier, or that the fiber cable or individual strands are not being used at all (i.e., unlit by anyone). E-Rate Central sees little need to distinguish between a carrier-provided fiber service lit by the carrier or by the applicant. As a practical E-rate matter, the difference may be affected only by the ownership of relatively low-priced GBICs at each end.

Unused fiber, on the other hand, is hard to imagine as a Priority 1 service. In many cases, customers reserving unused fiber cables or strands are effectively seeking ownership rights. E-Rate Central believes that the purchase or lease of unused fiber is inconsistent with the concept of a Priority 1 service. We would have no problem with any form of dark fiber being considered as eligible under Priority 2. By relaxing the defining presumption of a WAN crossing a public right-of-way, such dark fibers could be considered little more than a LAN extension.

Other NPRM issues are discussed in more detail below.

### **Interconnected VoIP Service**

E-Rate Central agrees with the FCC tentative decision to retain E-rate support for interconnected VoIP service. Although we have not seen extensive use of VoIP services by E-rate applicants — particularly since the two major pure VoIP providers, Vonage and Skype, have yet to obtain SPINs — we see no reason to exclude an increasingly popular alternative to traditional voice services. Arguments in favor of retaining VoIP E-rate eligibility include the following:

1. Interconnected VoIP providers have become USF contributors.
2. Traditional carriers are increasingly incorporating VoIP technology within their integrated networks.
3. Applicants are increasingly adopting internal VoIP-based telephone systems.
4. As VoIP technology becomes more commonplace, and merges with more traditional telecommunications technologies, any attempt to limit VoIP eligibility will be confusing to applicants.

The one aspect of current VoIP eligibility that is already confusing to applicants is its classification as Internet Access, not Telecommunications. E-Rate Central recognizes that VoIP’s regulatory status as a telecommunications or an information service is an ongoing issue, but notes that this distinction is lost on most E-rate applicants who, if anything, would view it as a telephone service. This causes a potential problem in the E-rate application process if VoIP is listed as a Telecommunications Service in an applicant’s Form 470 and Form 471. The Form 471 categorizations can be changed to Internet Access in PIA, but the “corrected” FRN will be denied if VoIP was listed only as Telecommunications in the applicant’s Form 470.

Pending an FCC decision on whether interconnected VoIP services are telecommunications or information services — and recognizing that the FCC has already determined “...that interconnected VoIP providers are providers of interstate telecommunications” — we urge the Commission to:

1. Confirm the E-rate eligibility of interconnected VoIP services;
2. Provide some clarification on the eligibility of Centrex VoIP services; and
3. Permit applicants seeking interconnected VoIP services to post their requirements for such services in either the Telecommunications or Internet Access categories of their Form 470s, regardless of how such services are ultimately requested in their Form 471 applications.<sup>4</sup>

### **Definition of “Basic Telephone Service”**

The current 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

The FCC clearly designated Centrex as a “basic” service for FY 2008, but the revised ESL was silent as to the status of PSTN services received through a PBX or key system. Although the above quoted language could be interpreted to include PBX and key system services as “basic,” the SLD has not adopted this interpretation and is still requiring technology plans for such services.

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<sup>4</sup> This Telecommunications/Internet Access classification problem is similar to the wireless Internet Access issue raised in E-Rate Central’s comments on last year’s FY 2008 draft ESL and reply comments to this year’s FY 2009 draft ESL in which we opined:

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 Form 470 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.

E-Rate Central believes that this distinction makes little 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. 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. 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. We agree that there is no need to require E-rate applicants to include such services in their technology plans.

E-Rate Central, therefore, strongly supports the NPRM proposal to define both Centrex and other PSTN access services as “basic telephone services” which do not require technology plans. Further, assuming that the basic telephone service definition is meant to be applied to all PSTN access through a PBX or key system, we believe that PRIs and trunk lines should be added to the list of “basic” services in the Telephone Service entry. Similarly, we support treating interconnected VoIP as a “basic” service.

For the purposes of consistency and technical neutrality, the FCC should also designate PBX and key system equipment, installation, and maintenance services as “basic.” However, such telephone equipment and services should remain Priority 2. To switch such services to Priority 1 would have the following negative consequences:

1. It would confuse what today is a fairly clear distinction between Priority 1 services and on-premise Priority 2 equipment and services. The situation would become even more confusing as more and more schools and libraries install internal VoIP telephone systems over multi-purpose LANs.
2. More importantly, it would increase the demand for Priority 1 funding, at all discount levels, further limiting funding for other Internal Connections for more needy applicants.

### **Definition and/or Eligibility of Internet2**

In its most recent comments to the draft ESL for FY 2009, the State E-Rate Coordinators’ Alliance (“SECA”) argued that, at least for purposes of the K-20 educational community, Internet2 should be defined as a public, eligible service (not, as currently considered by the SLD, an ineligible intranet service). E-Rate Central supported the SECA position in its own reply comments on that proceeding (FCC 08-180).

Should the Commission consider Internet2 something other than public Internet service, however, E-Rate Central asks that the Commission to specifically make Internet2 eligible. In further support of the arguments raised by both SECA and E-Rate Central in the aforementioned draft ESL proceeding, we would note the following:

1. A 2007 survey reported by Educational CyberPlayGround<sup>5</sup> indicated the following usage and access of Internet2 by K-12 schools and libraries:

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<sup>5</sup> See [http://www.edu-cyberpg.com/Internet/InternetII/Internet\\_II.html](http://www.edu-cyberpg.com/Internet/InternetII/Internet_II.html). Comparable data on K-12 schools is also available at <http://k20.internet2.edu/connectivitysurvey/type/K12%20School>, and for libraries at <http://k20.internet2.edu/connectivitysurvey/type/Public%20Library>.

- a. 35,971 (37%) out of 98,335 K-12 schools are connected to Internet2 via the Special Event Grant Program (“SEGP”). Of these schools, 4,350 (12%) are already connected to the Internet2 backbone network at speeds of 10 Mbps or higher.
- b. 3,325 (20%) out of 16,991 public libraries are connected to Internet2 via the SEGP Program. Of these libraries, 229 (7%) are already connected to the Internet2 backbone network at speeds of 10 Mbps or higher.

The number of Internet2-connected schools and libraries has been increasing rapidly and will be even higher this year.

2. Although Internet2 is not accessible by the public at large, it is “indiscriminately” available to schools and libraries, a “legally defined class of users” for which “...its service may legally and practically be of use.” The quoted criteria in the preceding sentence comes from the FCC’s Order on Remand with respect to common carrier status of the Iowa Communications Network (FCC 00-449).<sup>6</sup> E-Rate Central believes that this decision provides ample precedent for considering Internet2 to be a public Internet service, at least within the E-rate community of users.

Respectfully Submitted by:



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<sup>6</sup> See [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/FCC-00-449A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-00-449A1.pdf).