BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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

REPLY COMMENTS OF BLACKBOARD INC.

Blackboard Inc. ("Blackboard"), by its attorneys, hereby submits the following reply comments in support of (and in response to comments opposing) the proposed addition of telephone broadcast messaging ("TBM") to the E-rate program's "Eligible Services List" ("ESL"). As discussed below, the record in this proceeding establishes that TBM offers schools a means of providing communications connectivity between and educators, students and parents that not only is integral to the schools' educational mission but also is functionally equivalent or superior to communications services currently eligible for E-rate support. As such, and consistent with the Commission's prior decisions and the goal of promoting competition on a technologically neutral basis, the Commission should move expeditiously to add TBM to the E-rate ESL.

DISCUSSION

The record in this proceeding indisputably establishes that TBM provides communications connectivity between schools and students, parents, and staff that is integral to

the schools' educational mission.[1] Schools can and do use TBM for daily attendance monitoring, which can lead to reduced absenteeism and tardiness and improved educational performance; for the as-needed delivery of information to the school community regarding testing schedules, field trips, and other events where parental involvement is important; and for the provision of urgent information regarding unforeseen events that disrupt school activities and otherwise impede communications between and among parents, students and schools.

The Commission properly has taken an expansive approach to determining whether particular services should be eligible for E-rate support. The Commission has recognized that communications services provided "over any technology platform" should be eligible for E-rate funding if they serve an "educational purpose."[2] In addition, the Commission has recognized that support should be available for "functionally equivalent"[3] services and that the program should promote innovation and competition, not favor one service over others.

Notably, while a handful of commenters oppose adding TBM to the ESL, these same parties universally support adding text messaging, often on the grounds that text messaging is functionally equivalent to voice mail and e-mail. Blackboard and other commenters (including

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[1] As Blackboard noted in its initial comments, over 200 schools and school districts have contacted the Commission to express their wholehearted support for the addition of TBM to the E-rate ESL. One commenter, the Council of Great City Schools, contends that the fact that schools have engaged in an organized campaign to urge the addition of TBM to the ESL somehow renders the schools' support suspect. The Commission presumably will not lose sight of the irony of an entity that represents a coalition of schools expressing its concern about the organized effort of other schools to make their voices heard. The fact that hundreds of schools have taken the time and effort to communicate their support for the addition of TBM to the ESL is no less significant because that support has been expressed as part of an organized effort.

[2] *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208 (2003) ("*Schools and Libraries Second Report and Order*").

[3] *Id.* at 9212.

not only schools but also companies such as Verizon and eChalk) also support the addition of text messaging to the ESL. However, logical consistency dictates that if the Commission adds text messaging to the ESL, it must also add TBM. As Blackboard detailed in its initial comments, TBM is not only functionally equivalent to, and substitutable for, voice mail, e-mail, paging, and text messaging, it is in many significant respects superior to those services.[4]

Nor are there any legitimate bases for distinguishing TBM from other eligible services. In particular, arguments that TBM is an "application" or a "content" service and not a "conduit," or that TBM does not fulfill any educational purpose because it transmits "outbound" calls as opposed to communications to classrooms, are misplaced, as are arguments based on concern about the cost of adding TBM to the eligible services list.

For example, E-rate Central supports adding text messaging to the ESL but claims that TBM must remain ineligible because it is an "application."[5] Yet, according to the E-rate Service Providers Association ("ESPA"), text messaging (which ESPA supports having added to the ESL) also is an "application."[6] Similarly, Funds for Learning LLP ("FFL") argues generally that the E-rate program should be administered on a technology neutral basis that "emphasize[s] function rather than specific hardware or service classifications."[7] Yet, in virtually the next

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[4] For example, a recent study questioned the use by schools of text messaging as a primary crisis communications service, noting limits on its reliability, access control, and speed of delivery. *See* John Bambeck and Agnieska Klus, "Do Emergency Text Messaging Systems Put Students in More Danger?", *Educause Quarterly*, vol. 31, no. 3 (July – September 2008), available online at http://connect.educause.edu/Library/EDUCAUSE+Quarterly/DoEmergencyTextMessagingS/47084?time=1222632033 (accessed Oct. 2, 2008).

[5] E-rate Central Comments at 4.

[6] ESPA Comments at 17.

[7] FFL Comments at 3.

breath, FFL states that it opposes adding TBM to the ESL because "such services represent sources of content rather than conduits for the transportation of information."[8]

These comments illustrate the dangers of making eligibility for E-rate support dependant on labels or particular pigeon holes in an era where technology is rapidly evolving.[9] TBM is no more a "content" service than eligible services such as paging, voice mail and e-mail (or text messaging). Nor can those services be distinguished from TBM because the latter is used for "outbound" messages, as suggested by the State E-rate Coordinators Alliance ("SECA").[10] All of these services provide connectivity between and among various elements of the school community (*i.e.* educators, students, parents, staff, etc.). The content of the messages delivered – and the determination as to who is the recipient of such content – is entirely in the hands of the schools that use it.[11]

Finally, a couple of the commenters cite cost concerns as a reason for the Commission not to add TBM to the ESL.[12] For example, SECA argues that allowing schools to seek E-rate

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[8] *Id.* at 10.

[9] In this regard, Blackboard endorses Verizon's suggestion that the Commission create a new category on the ESL for "beneficial 'additional services' designated for support." Verizon suggests that this category could include e-mail and text messaging. *See* Verizon Comments at 7. Blackboard submits that other functionally equivalent services also would appropriately fit within this new category, including TBM services.

[10] SECA Comments at 10.

[11] As discussed *infra*, one of the advantages of TBM is that it gives schools even greater control over the use of this connectivity, both in terms of who can sends messages and who receives them.

[12] SECA Comments at 10-11; American Library Association Comments at 5.

support for TBM would cost $150 million annually, based on a per student cost of $3.00 for the nation's nearly 50 million K-12 public school students.[13]

It is hard to imagine a more disingenuous argument. As SECA presumably is well-aware, the E-rate program does not fund services at a 100 percent level. Rather, the E-rate program provides a discount (ranging from 20% to 90%), leading the Commission to acknowledge that "because our rules require schools and libraries to pay a percentage of the cost of services, schools and libraries are unlikely to request services that are not economical."[14] This same reasoning applies to the addition of TBM services to the ESL. Schools that want TBM will still pay the balance of the cost out of their own pockets after receiving an E-rate discount. Consequently, they will only request TBM if they find it to be an economical decision.

The Commission obviously is cognizant of the fact that demand for discounts has regularly exceeded the funding cap. However, that fact has not prevented the Commission from adding services to the ESL in the past. Refusing to add new services to the ESL because of cost concerns would effectively freeze the technology available for discounts, denying schools the ability to take advantage of advances such as those represented by TBM.

To the extent cost is at all a factor in deciding whether a particular service should be eligible for E-rate support, the focus must be, in accordance with Commission precedent, on whether the expansion of the ESL will lead to "waste, fraud or abuse."[15] And, if anything, adding TBM to the ESL will reduce the likelihood of waste, fraud and abuse. Messaging services such as e-mail, voice mail, paging, and even text messaging are relatively "open"

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[13] SECA Comments at 11.

[14] *Schools and Libraries Second Report and Order, supra*, 18 FCC Rcd at 9209.

[15] *Id.*

services that can be accessed by a wide range of users for a wide range of purposes. For example, any user of a school's e-mail or paging service may be able to use it to send personal or non-school related messages. Voice mail may be used to leave personal messages as well. In contrast, only a small number of senior school officials (*i.e.* superintendents, principals, etc.) are authorized to originate and initiate the distribution of messages via TBM and the "broadcast" nature of the technology means it has virtually no utility as a personal messaging service.[16]

In short, Commission precedent dictates that the decision whether TBM should be added to the ESL must be made consistent with the principles of technological neutrality and eligibility for functionally equivalent services, not on whether the addition of another service could result in additional demands for funding support. Moreover, insofar as cost considerations play any role in the Commission's decision regarding the eligibility of TBM for E-rate support, the Commission should find, based on the record evidence, that the economies and efficiencies offered by TBM warrant its inclusion on the E-rate ESL.

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[16] SECA contends that including TBM on the ESL will present cost allocation issues because only a portion of the calls made using TBM will be for emergency calls. SECA Comments at 11. However, SECA's argument is based on the baseless assumption that the only use to which a school can put TBM that has an educational purpose would be an emergency call. TBM calls relating to attendance, to testing and field trips, and to other school-related events obviously have an educational purpose and thus would be covered. Indeed, as discussed in the text, it is difficult to imagine any use that a school might make of its TBM service that would not qualify as being for an educational purpose. *See also* Wisconsin Department of Public Instruction Comments at 5 (adding TBM to the ESL will streamline the application review process).

CONCLUSION

As indicated above and in Blackboard's initial comments, the public interest would clearly be served by adding TBM to the E-rate ESL. The record establishes that TBM provides a service that is both integral to schools' educational mission and is functionally equivalent (or superior) to other communications services and technologies currently eligible for E-rate support. Adding TBM to the ESL would be consistent with Commission precedent and the goal of promoting technologically neutral competition.

Respectfully submitted,

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Dated: October 3, 2008

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