Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of:	
Eligible Services List For Funding Year 2010	**CC Docket No. 02-6**
Schools and Libraries Universal Support Mechanism	

REPLY COMMENTS OF EDLINE

Edline, a leading provider of web hosting services for the educational marketplace,[1] hereby replies to Comments filed in response to the Federal Communications Commission's ("Commission" or "FCC") draft Eligible Services List ("ESL" or "List") for Funding Year ("FY") 2010, released on June 2, 2009.[2] Edline supports USAC's proposal to clarify and confirm that password-protected web pages are eligible as part of web hosting services. Edline also urges the Commission and USAC to avoid confusion on the eligibility of new hybrid communications technologies by relying upon a structured and formal process for establishing eligible services rather than relying on ad hoc trainings and news briefs.

I. AS USAC SUGGESTS, THE COMMISSION SHOULD CLARIFY AND CONFIRM THAT PASSWORD-PROTECTED WEB PAGES ARE ELIGIBLE AS PART OF WEB HOSTING.

A. USAC Concluded Months Ago That Web Hosting Services That Provide Access to Intranet or Password-Protected Web Pages Should Be Eligible.

USAC's draft ESL for FY2010 proposes that the Commission should clarify and confirm, as eligible: "A web hosting service that provides a means for a school or library to display content on the Internet is eligible. Web hosting may include intranet service and/or password protected pages."[3] The Commission should adopt this proposal.[4] Indeed, the

[1] Edline provides E-Rate eligible services to thousands of schools and libraries throughout the United States.

[2] *See Comment Sought On Draft Eligible Services List for Schools And Libraries Universal Service Support Mechanism*, Public Notice, DA 09-1233, CC Docket No. 02-6, p. 1, bullet point 4. rel. June 2, 2009.

[3] *Id.* (*See* attached *Draft Eligible Services List Schools and Libraries Support Mechanism for Funding Year 2010*, p. 8).

draft ESL is supported by USAC's decision in April of 2009, after consultation with the Commission, and after listening to "feedback from both applicants and service providers," that web hosting services that provide access to intranet or password-protected web pages should be eligible.[5]

Last year, USAC proposed as part of its draft FY2009 ESL to make "Intranet web hosting" ineligible.[6] But Edline and other commenters, including the New York State Office of Children & Family Services[7] and the E-Rate Service Providers Association ("ESPA")[8] urged the Commission to refrain from adopting this proposal. As the New York State Office of Children & Family Services noted, for instance, "… use of an intranet site can be valuable to instructors in their essential job functions."[9] Edline commends USAC for carefully re-examining the issue in response to educators and service providers, and for supporting intranet and password-protected web pages as eligible.

B. The Majority of Commenters Addressing Web Hosting In Response to the FY2010 ESL Support Clarifying and Confirming the Eligibility of Password-Protected Web Pages.

Among the comments filed on June 23rd in response to the FY2010 ESL, six commenters addressed whether password protected web pages should be eligible as part of web hosting services. Five of those commenters, directly or indirectly, support clarification of password-protected web-pages as eligible: eChalk, SchoolSpeak, Inc., Funds For Learning, LLC ("Funds for Learning"), the E-Rate Management Professionals Association ("E-MPA")[10] and E-rate Central.

For example, eChalk "agrees that intranet web hosting, or password protecting web pages, should be considered eligible and applauds the FCC's decision to clarify the issue by putting it in writing in the ESL. The eligibility of intranet services has been a source of confusion among service providers for several years. Clearly stating its eligibility provides the necessary clarity for both applicants and service providers that will have a positive effect on the program."[11]

---

[4] In recommending adoption, Edline also agrees with the Comments of the E-Rate Management Professionals Association (pp. 3, 4) that the term "intranet service" is confusing with regard to an outside third-party service. Edline suggests the term "limited access information" be used instead.

[5] *See* Schools and Libraries News Brief, "Expanded Eligibility of Web Hosting for FY2009," April 10, 2009, available at http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=219.

[6] *See Draft Eligible Services For Schools and Libraries Universal Service Mechanism*, Public Notice, FCC 08-180, rel. July 31, 2008.

[7] *See* Comments of New York State Office of Children and Family Services, ¶¶2, 3, Aug. 12, 2008 ("*New York State Comments*").

[8] *See* Comments of E-Rate Service Providers Association, pp. 1, 3, 4, Aug. 14, 2008.

[9] *New York State Comments*, ¶3.

[10] *See* Comments of eChalk, p. 3 ¶3 ("*eChalk Comments*"); SchoolSpeak, Inc., p. 1 ¶1 ("*SchoolSpeak Comments*"); Funds for Learning, LLC, p. 4 ¶3 ("*FFL Comments*"); E-MPA, pp. 3-5 ("*E-MPA Comments*").

[11] eChalk Comments, p. 3 ¶3.

Funds For Learning also agrees with USAC's inclusion of web hosting as eligible because "The purpose of the E-Rate program is to transmit educational information to students and library patrons. Finding that a web hosting service must serve pages to the general public in order to be eligible would clearly create a conceptual anomaly that could not possibly stand up to any amount of scrutiny."[12]

In bolstering its argument that Internet 2 should be an eligible service, E-Rate Central cites USAC's web hosting proposal that includes password-protect pages as the basis for recommending that the Commission adopt Internet2 as eligible.[13]

The State E-rate Coordinators Alliance ("SECA") is the sole party that opposes the clarification regarding limited access websites. Edline respectfully submits that SECA's comments may reflect some misunderstandings and offers the following clarifications:[14]

1. Public Internet Space.

First, SECA indicates in its comments that password protected web hosting should not be eligible because it does not reach "the boundaries of the public internet space". It is possible that confusion here derives from the word "intranet" which in some instances may reference a local network physically limited to a school site. However, in the case of web hosting services, just as is the case for e-mail services, communication between the school and the outside provider always must pass through public Internet space. Use of a password does not change this technical fact, either for websites or for email.

2. Hosting Economics.

SECA questions the costs of K-12 web hosting providers in comparison to generic providers like Yahoo. The comparison misunderstands that K-12 providers typically include a site for every individual school building within a district in addition to sites for hundreds of individual classes, clubs, and departments that must be individually administered by teachers and staff. A single teacher may be required to administer a web presence for multiple classes and activities, with numerous subsidiary web pages providing daily information to a large audience of students. When one aggregates the cost of providing a multitude of "bargain" sites, for a proper comparison, K-12 web hosting service providers offer more comprehensive solutions at a fraction of the cost of what would be required from a generic provider. In contrast to SECA's misperception, the competitive marketplace is

---

[12] FFL Comments, p. 3 ¶4. *See also* SchoolSpeak Comments, p. 1 ¶1 (noting "We welcome the inclusion of intranet service and/or password protected pages into the eligible services. This will significantly increase the usability of websites for school, e.g. it will enable schools to use the web for communication with students and with the parent community and thus reduce paper usage and related cost and labor.")

[13] *See* Comments of E-rate Central p. 2 ¶6 (noting that "USAC's apparent basis for treating Internet2 access as ineligible is that it is a non-public, Intranet service. Given the recent clarification on the eligibility of Intranet, password-protected Web hosting, this interpretation appears outdated.")

[14] Edline notes that some of these clarifications have been provided in greater detail in previous filings by Edline and other numerous supporters of the proposed clarification of the 2010 ESL. *See* for example, Edline Comments, p. 10, Aug. 14, 2008.

functioning exceptionally well in providing value to applicants. A similar dynamic exists with email where free or bargain solutions (e.g., Hotmail, Gmail) may exist yet they do not meet the needs of applicants.

3. Content v. Communication of Content.

SECA objects to web hosting being used to communicate specific types of information such as "homework".[15] A recent USAC newsletter also implied there may an eligibility issue communicating "homework". Edline contends that such an objection reflects further misunderstanding. A web hosting service, email service, or text messaging service that communicates homework (whether as a simple description in a text message, a rich HTML email with embedded graphics, a posted PDF file at a web page, or an MS Word document attachment to an email) is eligible, irrespective of the particular information being communicated. Moreover, communicating homework is one of the primary purposes of a teacher website. The idea that the eligibility of a communication service could be based upon what information a given applicant chooses to communicate would lead to an absurd policy that would be impossible to implement. For good reason, no FCC rule or policy suggests such an approach to determining eligibility-- just as no FCC rule or policy suggests that limited or targeting communication impacts eligibility either.

4. Web-Based Software Applications.

Finally, SECA suggests that the eligibility of password protected websites will result in a "loophole" such that essentially any web-based software system for schools can be funded under E-Rate. SECA's view is based on erroneous reasoning. To deal with this concern, SECA suggests that web hosting technology be singled out for additional cost allocation processes, including cost allocation of *all eligible components within an eligible service*. To add another layer of cost allocation complexity would burden applicants, web hosting providers, and USAC. Moreover, it focuses on the wrong issue. Rather than creating an entire new set of complex, uncertain, and ever-changing technological benchmarks (e.g., how much of an eligible cost of a given eligible service should be storage versus web servers versus bandwidth versus routers…), USAC should simply apply the existing guidelines that require cost allocation and/or separation of *ineligible* products from eligible services.

Edline also contends that the distinction between an ineligible web-based data analytics system and a teacher web page is obvious on its face. To the extent confused service providers have attempted to qualify obviously ineligible applications such as a data analytics application as eligible, the appropriate mechanism is to ensure the distinction is properly understood in the E-Rate community: It is the "communication" function and purpose of a website, e-mail, or text message that makes it eligible and not the fact that it is "web-based." Thus, a subscription music service may be "web-based" or a standards-based assessment system may be "web-based," but neither is a communication service and neither is eligible. SECA's strategy of denying applicants the benefits of limited access websites (or newer communication mediums such as chat rooms or instant messaging) is clearly not

[15] SECA looks with disfavor on "a school district's portal or student information system where students, teachers, administrators and parents view online grades, homework, and attendance records." SECA Comments, p. 10.

technologically neutral and is completely at cross-purposes with the core policy objectives of the Commission that applicants should benefit form these advancements.

C. Edline Supports Eligibility For Limited-access Internet-Based Information Because It Follows Core Principles of Technological Neutrality and it Facilitates Student Safety and Privacy, Two FCC Policy Objectives.

Edline agrees with the commenters supporting eligibility for "limited access" or "password-protected" Internet-based information, because this clarification necessarily follows from core FCC principles of technological neutrality. Edline also supports the proposed clarification because it facilitates vital FCC policy objectives of student safety and privacy, in addition to ensuring that applicants are able to use web-based communication solutions that incorporate the benefits of current technology.

1. Technology Neutrality.

The Commission firmly established the principle of "technological neutrality" in its 1997 Order that established the E-rate program.[16] The principle holds that one form of electronic communication will not receive preferential treatment over another, so that applicants are not limited to obsolete modes of communication.[17] In the case of "intranet" web hosting, applicants would be denied advancements that facilitate far more efficient communication and are vital to student safety and privacy in today's online world.

Just as email facilitates "limited-access" communication by using a password, technology neutrality mandates that web hosting may also employ a password to limit or target communications. Specifically, web-based email provides communications rendered on a web page that may contain rich content, graphics, embedded links, and file attachments just like web page on a school's website. Both forms of communication travel over the public internet, are rendered in HTML in a browser, and may be restricted or targeted to a specific audience. Clearly there is no policy or program goal mandating that information communicated on a web page must be broadcast to the entire public (like radio or television) since the targeted nature of web-based email would then not be eligible.

2. Student Safety, Privacy, and Administrative Efficiency.

---

[16] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) ("*Universal Service First Report and Order*").

[17] In describing technological neutrality, the Commission said, "Technological neutrality will allow the marketplace to direct the advancement of technology and all citizens to benefit from such development. By following the principle of technological neutrality, we will avoid limiting providers of universal service to modes of delivering that service that are obsolete… We anticipate that a policy of technological neutrality will foster the development of competition and benefit [providers] that may have been excluded from participation in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies. *Universal Service First Report and Order* ¶ 49.

In addition to the very clear technical reasons why intranet web hosting is eligible, this particular mode of communication supports vital public policy objectives. School and classroom websites are used to communicate content that can include identifying photographs of students, information about students' academic and extra-curricular activities, and other information totally inappropriate for the general public. Protecting the safety and privacy of students requires that schools can easily restrict viewing of such information to the appropriate members of the school community. If applicants were denied the benefit of marketplace advancements in eligible intranet web hosting, schools relying on federal funding for website communications would face the untenable choice of either endangering student safety or being denied effective online communication (the unfortunate reality is that student safety would suffer in many instances). Furthermore, because restricted and unrestricted content is interwoven throughout a school's website, any attempts to cost-allocate would create an administrative nightmare for applicants, service providers, and USAC alike.

The majority of commenters addressing web hosting in this ESL proceeding, and in last year's ESL proceeding, support USAC's decision last April, as reflected in the FY2010 ESL, to confirm and clarify that password-protected web pages are eligible as part of web hosting services. The Commission should, likewise, support this result.

II. EDLINE AGREES WITH FUNDS FOR LEARNING AND OTHER COMMENTERS THAT SIGNIFICANT DETERMINATIONS RELATING TO THE ELIGIBILITY OF SPECIFIC TECHNOLOGIES OR PRODUCTS SHOULD BE VETTED AND COMMUNICATED IN A MORE FORMAL, STRUCTURED, AND TRANSPARENT PROCESS THAT INCORPORATES CORE FCC RULES AND POLICIES, AND NOT IN AD HOC PRONOUNCEMENTS IN TRAININGS OR NEWS BRIEFS.

The Commission's Public Notice seeking comment on the draft ESL for FY2010 specifically notes that "this proceeding is limited to determining what services are eligible under the *Commission's current rules* and is generally not intended to be a vehicle for changing any eligibility rules."[18] (emphasis added). Several commenters have noted that ambiguity arises when USAC departs from the Commission's current rules and takes positions apart from the ESL process that conflict with prior determinations of eligibility and/or the Commission's rules and policies. Often, USAC makes such statements during applicant and service provider training sessions or in its Schools and Libraries News Briefs that are posted on USAC's Schools and Libraries web page.

For example, several filings have referenced confusion that was created regarding USAC News Briefs with differing positions on the eligibility of password protected web hosting. Funds for Learning points out that "placing important eligibility guidance in an e-mail newsletter is tantamount to hiding it."[19] Edline suggests that the Eligible Services List itself

[18] *See* Public Notice, p. 2 ¶1.

[19] "As a practical matter, placing important eligibility guidance in an e-mail newsletter is tantamount to hiding it. USAC routinely instructs people who want eligibility information to consult the Eligible Services List, not USAC newsletters. Most people would never think to look or take the time to search for additional eligibility in old USAC newsletters. For those who do, they quickly discover that locating specific information, in the proper

should be the vehicle for critical clarifications of FCC eligibility requirements, and the annual ESL update process should place high emphasis on FCC core principles in providing clarification about what is and is not eligible. Edline contends that past confusion on intranet web hosting would have been prevented and that future confusion on new converging technologies such as instant messaging or "chat rooms" can be avoided simply by upholding the following core principles:

- Technology Neutrality
- Safe Harbor, providing that the plain language of the Eligible Services List can be relied upon[20]
- Regulatory separation between communication services and the content that flows over these services[21]
- Administrative due process, requiring that regulatory changes must be vetted through a notice and comment process[22]

Prior to the proposed 2009 ESL there had been no public vetting or statements from USAC or the FCC on the specific issue of password-protected / intranet web hosting. When USAC proposed a change to the 2009 ESL indicating that intranet web hosting would not be eligible, numerous members of the e-rate community found the plan to be inconsistent with FCC policy and filed public comments to that effect.[23] The FCC subsequently rejected any proposed changes to the ESL for 2009 in its formal announcement.[24]

---

sequence, is difficult and requires reviewing all newsletters to insure accuracy and completeness." Comments of Funds for Leaning LLC, p. 6

[20] In adopting a more formalized process for the Eligible Services List in FY2003, the Commission indicated:

"The yearly updated list will interpret what may be funded under current rules, and will represent a safe harbor that all applicants can rely on in preparing their applications for the coming funding year…. The rule we adopt today will simplify program administration and facilitate the ability of both vendors and applicants to determine what services are eligible for discounts." *See Schools and Libraries Universal Support Mechanism*, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912, ¶40 (2003). (Emphasis added)

[21] In 1997, the FCC separated ineligible "content" from eligible "communication of content," [Some respondents] are confusing two different types of information services. We do not grant schools and libraries discounts on the cost of purchasing information content. We conclude, however, that we are authorized to provide discounts on the data links and associated services necessary to provide classrooms with access to those educational materials." FCC 97-157 at paragraph 441. Note that the FCC provides eligibility for "access to…educational materials" without regard to the method employed by an applicant (word processing, graphics software, web page design tool, spreadsheet, or custom application software) in creating those educational materials. The FCC also pragmatically provided that "minimal content" could be provided with an eligible Internet access service. (paragraph 443) In addition, FCC rules for an "ancillary service" allow full funding for a component that includes minor, integral ineligible features in certain circumstances. *See* 47 C.F.R. 54.504(g)(2).

[22] Administrative Procedures Act, 5 U.S.C. § 553(b),(c).

[23] *See,* e.g., Reply Comments of Kellogg & Sovereign Consulting, LLC, pp. 3, 4 ¶2 (providing a useful compilation of the arguments in favor of limited access information over the Internet).

[24] *See Release of Funding Year 2009 Eligible Services List For Schools and Libraries Universal Service Mechanism*, Public Notice, FCC 08-265, ¶1, Rel. Nov. 21, 2008 (noting "We decline to adopt any of the changes to the ESL proposed by USAC. As such, the funding year 2009 ESL we release today is the same as the funding year 2008 ESL.")

Certain members of the "E-Rate community, such as Edline, concluded that the FCC's refusal to adopt the change obviously indicated that USAC's proposal would not and could not be implemented. Others apparently relied on informal and non-public communications from USAC staff that expressed differing points of view, resulting in confusion.

Despite the fact that the formal, public vetting process had resulted in a rejection of USAC's proposed changes by the FCC, USAC indicated in a News Brief of January 30, 2009 that the change would nevertheless be implemented. This had the unfortunate effect of undermining any sense of legitimacy, due process, and transparency in the process.

By simply upholding core FCC principles, the vetting and ultimate policy positions regarding web hosting would have remained at the ESL level. Technology neutrality would suggest that establishing policy on "limited access" or "password-protected" communication is not something that should happen at the program administration level. Safe Harbor and proper administrative procedure would also suggest no action outside of a public, FCC-level vetting process. Had these principles been followed, then the issue could have been debated again in 2010 in a public forum resulting in clear and formal guidance visible to all participants. The interim confusion would never have occurred.

In its News Brief of April 10, 2009, USAC indicated that access to "chat" and "blogs" was not eligible.[25] Edline contends that this is history repeating itself. Clearly, "Chat" and "blogs" are communication mediums (as opposed to ineligible data systems, curriculum systems, etc.) and therefore principles of Technology Neutrality and Safe Harbor should come into play. Eligibility should not be ruled out at the program administration level. Edline proposes two possible paths forward on Chat Rooms and Blogs, as well as Discussion Boards and Instant Messaging):

- To the extent the FCC perceives these communication technologies as obviously eligible, one approach would be to amend the ESL to specifically include these communication mediums as eligible forms of email, web hosting, or a new category.
- An equally legitimate approach would be to open a rulemaking that would allow for full public vetting at the FCC level and a formal, clear statement of policy.

Edline sees no basis for USAC to -- without public comment -- declassify Discussion Boards, Chat Rooms, Instant Messaging, Blogs or other useful communication technologies as ineligible, certainly at the program level. For example, one might view an online "discussion board" or "chat room" as the email equivalent of a conference call. To the extent a "blog" has any meaning as a communication form, it seems to be a web page where the communications are sorted by date, similar to a list of email messages.

In today's competitive and advancing technology landscape, applicants are already seeking Discussion Boards, Blogs, Chat, and other similar communication tools from existing service

[25] USAC stated that "[a]ccess to software applications (e.g., blogs, homework, chat…)" are not eligible. *See* Schools and Libraries News Brief of April 10, 2009, available at http://www.universalservice.org/sl/tools/news-briefs/preview.aspx?id=219.

providers. Thus, it is essential that service providers such as Edline have clarity to properly plan for how these communication technologies will be offered to applicants, whatever the ultimate eligibility determination may be. Edline urges the Commission, in releasing the finalized Eligible Services List, to clarify if prior Schools and Libraries News Brief information regarding new communication mediums is an accurate reflection of FCC policy, thus utilizing the Eligible Services List as a safe harbor, as intended.

III. CONCLUSION.

Edline and the majority of commenters that addressed web hosting support USAC's proposal to clarify and confirm that password-protected web pages are eligible as part of web hosting services. The Commission should confirm this result. Going forward, Edline urges the Commission and USAC to avoid confusion on the eligibility of new hybrid communications technologies by relying upon a structured and formal process for establishing eligible services rather than relying on ad hoc trainings and news briefs. Such a process is particularly needed with respect to Discussion Boards, Chat Rooms, Instant Messaging and Blogs, all of which are widely available communication mediums that, at minimum, deserve to be vetted in a public manner by the FCC and, most likely, incorporated into a future ESL as eligible Internet-based communication technologies.

Respectfully submitted,

Edline

By:

_____/s/_____
Jonathan Abrams
Edline
200 West Monroe
Suite 1250
Chicago, IL 60606
(312) 346-9900

_____/s/_____
Jennifer L. Richter
Jennifer A. Cetta
Patton Boggs
2550 M Street, NW
Washington, DC 20037
(202) 457-5666

Dated: June 30, 2009