

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| Schools and Libraries Universal Service | ) | CC Docket No. 02-6  |
| Support Mechanism                       | ) |                     |
|   | ) |                     |
| A National Broadband Plan               | ) | GN Docket No. 09-51 |
| For Our Future                          | ) |                     |

**COMMENTS OF GENERIC CONFERENCING, LLC**

Generic Conferencing, LLC (“Generic Conferencing”), through undersigned counsel, submits its comments in the above-referenced proceedings.<sup>1</sup> The Federal Communications Commission (“FCC” or “Commission”) seeks to promulgate rules to implement its National Broadband Plan recommendations, including expanded access to the Internet and web-based distance learning services and seeks comments on its proposed Eligible Services List for Funding Year 2011. As the Commission has noted, distance learning programs are a growing and increasingly essential tool that enable schools to expand their services in a cost-effective manner. In order to utilize fully the expanding access to high-speed Internet services, however, schools must be able to pay for and access distance learning services. The Commission’s current 2010 guidelines and draft 2011 guidelines on funding eligibility for distance learning services are unclear, which unnecessarily hampers the ability of schools to seek such funding. Generic Conferencing respectfully urges the Commission to review the classification of these services and confirm that they are eligible for funding.

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<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, Notice of Proposed Rulemaking, FCC 10-83 (May 20, 2010) (“*E-rate NPRM*”); *Schools and Libraries Universal Support Mechanism*, Order and Further Notice of Proposed Rulemaking, FCC 09-105 (Dec. 2, 2009).

## **I. Background**

Since 2006, Generic Conferencing has provided web-based and audio conferencing services in the United States and over 20 other countries using Voice over Internet Protocol (“VoIP”) and open source software. In addition, Generic Conferencing provides distance learning services by providing hosting services for BigBlueButton open source software. This service enables schools to deliver a high-quality learning experience to students in remote locations and is easy to use as it requires only a web browser with Flash support and an Internet connection.

Generic Conferencing’s distance learning service currently uses real-time voice conferencing, video conferencing, document sharing, group chat, desktop sharing, audio archiving, and plug-ins for integration with popular learning management systems (such as Moodle and Sakai) and other content management systems (such as Drupal and TikiWiki). These systems allow students to view documents that are being shared by a presenter, hear and see audio and video from other participants, and see information about who is participating. Students can also share their own webcam video, type in a chat window to exchange public or private text messages with others, and electronically “raise a hand” to signal for attention with a simple mouse click. A moderator, who is usually the course instructor, has additional powers to manage the virtual classroom, mute and un-mute participants, and to designate one of the participants to be the presenter. The presenter can upload and share documents, control how those documents are seen by other participants, and access other capabilities including desktop sharing. By default, the moderator is also the presenter, but there are many situations where a moderator would designate a different participant to be the presenter, including in-class student presentations.

Most classes are offered remotely using one of two formats: (1) online classes where all participants are remote, and (2) hybrid classes where some participants are remote and some participants are physically co-located together, typically in a classroom with the course instructor. In an online class, all participants including students and instructors interact through Generic Conferencing's services. At the scheduled day and time, participants join the class using any computer with a web browser that supports Flash and a broadband Internet connection. No local software is required, other than a standard web browser. Many students choose to attend classes from their home, but if broadband is unavailable at home students can access the classroom from a library or other remote location. During a network outage or other situation where the Internet is unavailable, students can connect to the audio portion of a class through a landline telephone or mobile telephone. In a hybrid class, the classroom would be equipped with a webcam and audio conference phone. Typically, a projector and monitor in the classroom would show information about remote participants, possibly including video, as a constant reminder to local participants that others are participating online.

Generic Conferencing's distance learning services provide a cost-effective means for teachers and students to expand the opportunities for learning a diverse number of subjects and provide new and challenging experiences for students that would otherwise be unavailable in their local community.

## **II. Online and Distance Learning Provides Essential Services to Schools**

Generic Conferencing supports the FCC's recent initiatives to review and expand access to distance learning programs. As demonstrated time and time again, these services allow schools systems to access a diverse range of learning programs that might otherwise not be available in the local community. As the Commission stated in the National Broadband Plan

(“NBP”), broadband access and distance learning programs “break[] down traditional barriers so that teaching and learning happen in new ways” and would allow, for example, a “student attending a rural school that does not offer an Advanced Placement (AP) calculus course [to] receive instruction online from a teacher in a different part of the state or even the country” through not only lectures, but also instant messaging and email tools.<sup>2</sup> In addition, Chairman Genachowski, upon the opening of this proceeding, noted that the NBP “laid out a vision of cutting-edge classrooms where students and teachers have innovative digital tools, access to best online educational content in the world, and the skills to take advantage of them.”<sup>3</sup> These types of services also provide cost-effective tools for teachers and school systems struggling to provide high quality educational services on increasingly limited budgets.

In order to access and utilize Internet resources, including distance learning programs, schools have historically been provided federal funding assistance. The Commission’s first initiative to expand access was through the development of the E-rate program for schools and libraries, which is funded through the Universal Service Fund (“USF”). While the E-rate program has expanded access to the Internet to 97% of all public schools,<sup>4</sup> unfortunately, as the Commission has found, providing an access point to the Internet is only half of a solution to bringing our schools into the 21st century. “Without upgraded Internet access and the internal connections necessary to bring the connection all the way to the classroom or library patron, many users simply will be unable to utilize many applications available in today’s marketplace, such as high-definition video streaming, that support online learning.”<sup>5</sup> In addition to reviewing the need to provide greater funding support for internal connections that allow access by a

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<sup>2</sup> *Connecting America, The National Broadband Plan*, Federal Communications Commission, at 245 (2010) (“NBP”).

<sup>3</sup> *E-rate NPRM*, Statement of Chairman Julius Genachowski.

<sup>4</sup> *NBP*, at 254.

<sup>5</sup> *E-rate NPRM*, at ¶ 67.

greater number of students and teachers, the Commission must also review funding priorities and eligibility to cover the cost of the programs themselves. Access to these programs is essential if the schools can hope to utilize the full potential of E-rate funded Internet access. As the Commission noted in this rulemaking “more advanced applications such as media streaming and video conferencing, distance or online learning, multimedia applications that make learning more engaging and relevant, and one-on-one programs that enable student to engage in continuous learning hold great promise for educating the next generation.”<sup>6</sup> However, without access to E-rate funding to cover the cost of distance learning, the Internet access pipeline already paid for and connected to the schools, along with potential new funding for internal connections, will be for naught if the school systems simply have no further money and are not granted any assistance to pay for advanced and technologically robust distance learning programs.

Furthermore, the Commission must review and revise the eligibility guidelines to ensure that funding for telecommunications services does not unfairly discriminate against companies that use Internet connections to provide the same services. Since the Internet pipeline to the school has already been funded, the Commission must ensure that companies can utilize that entry point to provide services without risking the school’s access to funding because delivery of the service was not made via a traditional telecommunications pathway. By ensuring equal treatment of services regardless of delivery methods, the Commission will further its goal of expanding access by allowing companies to chose the most efficient and cost-effective manner for providing learning services.

### **III. Commission Must Clarify Distance Learning Eligibility for E-Rate Funding.**

Currently, eligibility for E-rate funding is limited to telecommunications services or information services that have been deemed eligible by the Commission. In order to realize fully

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<sup>6</sup> *Id.* at ¶ 58.

its goal of expanding access to online and distance learning services, the Commission must clarify the classification of these services as telecommunications services or eligible information services. As described above, the Generic Conferencing distance learning service uses both audio and video conferencing along with online tools to provide educational resources to students. The combined use of these services results in confusion about the proper classification of the service and its resulting eligibility for E-rate funding that would allow the expanded use of the Generic Conferencing and similar distance learning programs.

Each year, the Commission and Universal Service Administrative Company (“USAC”) sets forth guidelines on eligible services which do not provide clear classification of distance learning services. The Eligible Service List (“ESL”) is issued by USAC every year and provides guidance on which services and components are eligible for e-rate funding granted to schools and other eligible institutions.<sup>7</sup> Specifically, the ESL for Funding Year 2010 sets forth a listing and description of which services and facilities are eligible for funding (*i.e.* DS-1, fiber optics or T-1 lines) and also lists those services and facilities that are not eligible (*i.e.* dark fiber services or payphones). Unfortunately, the ESL 2010 guidance as to the eligibility of funding for payment for online and distance learning services, which often incorporate audio and video conferencing services, is unclear. Specifically, the ESL provides that the “telecommunications component of voice or video conferencing services that provide a means for multiple users to participate in group discussion can be eligible” for e-rate funding.<sup>8</sup> However, it further provides that “charges for web meeting or online collaboration solutions for the provision of distance learning or video conferencing charts (e.g. web meetings or online collaboration solutions) are

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<sup>7</sup> *Eligible Service Lists, Schools and Libraries Support Mechanism for Funding Year 2010*, Universal Service Administrative Company, available at (“*ESL List 2010*”).

<sup>8</sup> *Id.*, at 4.

NOT eligible for discount.”<sup>9</sup> As such, these instructions appear to imply that at least a portion of the video conferencing used to access distance learning services, such as those provided by Generic Conferencing, are telecommunications services eligible for funding, but the “online collaboration solution” portion of the service is not eligible for e-rate funding.

In addition, the current and proposed ESL instructions do not comply with FCC orders on the classification of audio and video conferencing services. First, audio conferencing services are now classified as telecommunications. In the *Intercall Order*, the FCC found that audio bridging services which allows “end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge) without change in the form or content of the information as sent and received (voice transmission)” is telecommunications subject to USF contribution requirements.<sup>10</sup> Therefore, if the provider elects to offer such services on a common carrier basis, the audio conferencing portion of distance learning services are telecommunications services eligible for E-rate funding and the ESL for Funding Year 2011 should be revised to reflect the Commission’s decision.

Unlike audio conferencing services, the classification of video conferencing and thus its eligibility for E-rate funding is murky, but based upon the standards set forth in the *Intercall Order* and other FCC decisions, it could be classified as a telecommunications service if the provider holds itself out as a common carrier. First, as with audio conferencing services, many video conferencing services transmit calls across telephone lines to an end point that is chosen by the user and which is transmitted without a change to the information communicated. Other providers transmit calls across the Internet. The Commission has previously found that “entities providing, on a common carrier basis, video conferencing services, channel service or video

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<sup>9</sup> *Id.*, at 7.

<sup>10</sup> *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, 23 FCC Rcd 107321, ¶ 11 (2008) (“*Intercall Order*”).

distribution services to cable head-ends would contribute to universal service” as providers of telecommunications services.<sup>11</sup> However, video conferencing services are not currently included in the Instructions to Form 499-A as telecommunications services subject to USF contribution. It is therefore not clear whether the FCC was referring to the transmission services rather than the video conferencing capabilities that use such transmission services, and it is not clear whether video conferencing transmitted across the Internet should be classified as an information service.

The fact that video conferencing has not been classified as telecommunications or information, however, does not limit the Commission’s ability to add it as an eligible service. For example, in Funding Year 2007, the Commission added Voice over Internet Protocol (“VoIP”) to the eligible services list even though it has not classified VoIP as either a telecommunications or information service.<sup>12</sup> Therefore, to promote access to and use of distance learning, the Commission should clarify the ESL for Funding Year 2011 to ensure that the entire video conferencing service, and not just the transmission portion of the service, is eligible. Furthermore, the audio and video conferencing services are essential to the provision of distance learning services. Therefore, if audio and video conferencing services are deemed to be eligible for funding, then the Commission must take the necessary next step and deem that distance learning service utilizing these conferencing services as an essential part of their service are also eligible for E-rate funding. Finally, by providing funding of only the transmission portion of audio and video conferencing services, without allowing for funding of services provided over Internet access, the Commission is discriminating against like services based upon

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<sup>11</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 278 (1997) (“*First USF Order*”).

<sup>12</sup> *Eligible Service Lists, Schools and Libraries Support Mechanism for Funding Year 2010*, Universal Service Administrative Company, available at [http://www.usac.org/\\_res/documents/sl/pdf/ESL\\_archive/EligibleServicesList\\_101906.pdf](http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_101906.pdf) (“*ESL List*”).

the technology used for transmission. Such a policy would be contrary to the Commission's public support of expanding access to distance learning programs and ensuring that schools can fully utilize funded Internet access service.

In some situations, distance learning programs may not provide transmission or utilize audio or video conferencing services, and therefore may be more properly classified as information services.<sup>13</sup> Specifically, depending upon the type of service provided and how it is provided, a distance learning service may "functionally integrate" the information services features with telecommunications. However, even these distance learning services may be deemed eligible for E-rate funding as information services. The FCC has repeatedly determined that information services that enhance or are essential to providing telecommunications services to schools and libraries are eligible for e-rate funding. First, the FCC found that Internet access is essential to schools services and included the information service as an eligible service for E-rate funding.<sup>14</sup> In addition, the FCC has held that voice mail and voice messaging, which are classified as enhanced or information services, "are used in conjunction with telecommunications services" and thus should be eligible for discounts.<sup>15</sup> If the Commission determines that some distance learning programs are properly classified as information services, then Generic Conferencing urges the Commission to clarify that such services are eligible for E-rate funding as services that are used in conjunction with telecommunications services and which are essential to further the Commission's goals of expanding access to distance learning programs.

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<sup>13</sup> 47 U.S.C. 153(20). An information service is "the offering of a capability for generating, acquiring, storing, processing, retrieving, utilizing or making available information via telecommunications."

<sup>14</sup> *First USF Order*, at 781.

<sup>15</sup> *Schools and Libraries Universal Support Mechanism*, Second Report and Order and Further Notice of Rulemaking, 18 FCC Rcd 9202, ¶ 29 (2003).

## **Conclusion**

Generic Conferencing respectfully requests that the Commission clarify the classification of Internet-based distance learning services as services that are eligible for E-rate funding. By revising the proposed Eligible Service List for Funding Year 2011 to include distance learning services as eligible for funding, regardless of their classification as telecommunications or information services, the Commission will significantly expand schools' access to and ability to use these services. Most importantly, the inclusion of these services as eligible recipients of USF funding will enable schools systems to pay for and use high-quality and technologically sophisticated distance learning services to serve the educational needs of children.

Respectfully submitted,

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