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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Notice of Ex Parte Communication - Docket Nos. 02-6 and 09-51**

Dear Ms. Dortch:

On Wednesday, August 4th, Phil Gieseler, Jon Abrams from Edline, Aric Holsinger from ePals, and Jennifer Richter, counsel to Edline and ePals, participated in a conference call with Gina Spade, Regina Brown and Rebekah Bina of the Federal Communications Commission's Wireline Competition Bureau ("WCB"). The call was scheduled to discuss two questions FCC staff are exploring as part of its consideration of web hosting issues in the above-referenced dockets.

1. The first question posed by WCB staff was whether there are any suggestions for helping the Commission distinguish between eligible web hosting services versus generalized activity on the web, not all of which should be considered eligible web hosting. WCB staff was particularly interested in discussing "application software."

- Ensuring that USAC and the FCC are distinguishing eligible web hosting services from ineligible services/features was mentioned in multiple comments filed in the dockets, including the comments filed by Edline and ePals.

- When discussing ineligible tools/features, a common theme among commenters, including Edline and ePals, seemed to be that software that manages student grades, attendance (SIS), curriculum, or assessment systems, should not be eligible. None of these are communications tools. These types of systems have the most potential to be costly to the E-rate Fund, and it should be clarified that they are ineligible.

- An effective bright line for distinguishing eligibility of web hosting software/services would be **whether the primary purpose is for communication**. Services that facilitate communication as their primary purpose and use should be eligible, while software/systems that do not facilitate

communication as their primary purpose should not be eligible. This bright line test could be easily administered in a technology neutral manner, and would make obvious the ***ineligibility*** of major categories of software that have the potential to be costly to the fund (such as SIS for grades/ attendance, curriculum, assessment, etc.)

- Proper implementation of this bright line test requires two important points of clarification:

- **Point #1, Clarification Regarding "Application Software"**: It is important that the bright line test is properly drawn. In this vein, Edline and ePals raised an issue about "application software" that is found in one set of reply comments. That commenter noted that "application software" should not be funded as a fundamental precept of the E-rate Program. It would not be proper for the Commission to draw the line at application software. Using the term "application software" as a basis to determine eligibility would be inconsistent with the Commission's current approach to eligibility and would be technically inaccurate. E-rate currently funds "application software" when it is a component of a communication service or system. Examples include eligible email services (web-based interface to compose, edit, sort message content including html and multimedia), and voicemail (user interface to record, store, organize messages), etc.

- **Point #2, Clarification Regarding "Content Creation/Editing" Features**: Edline and ePals similarly noted that "content creation/editing" features are currently funded as components of several eligible Priority 1 communication services, including email and voicemail. For example, eligible email includes a user-interface to create, edit, search and organize message content including html, multimedia, and supporting functionality such as spell check. A technology neutral approach would treat a web page or blog no differently than email or other Priority 1 services, and would not draw different eligibility distinctions over user-interfaces for content creation and editing. The fact that web hosting has been singled out to cost allocate these features, which are not cost allocated for email, is one reason administration has become so complex.

- **WCB staff asked for concrete examples of what would be eligible and ineligible when utilizing the bright line test proposed by Edline and ePals**. Applying the bright line test consistently, and observing competitive neutrality (treating similarly situated services in the same manner for eligibility purposes) and technology neutrality (refraining from providing preferential treatment for one form of electronic communication over another), the following services/software would be **eligible** as it is clear that their primary purpose and use is communication.

    - Web-based email

- Web pages
- Blogs
- Discussion Boards
- Chat
- Instant messaging

Using the same principles, the following software/systems would clearly be **ineligible**, as their primary purpose and use is not communication:

- A Student Information System that manages a school's grades, attendance, and other data ("SIS")
- Curriculum Software that provides proprietary, third party educational content
- Financial Software that manages accounting, HR, or payroll functions
- Assessment systems(deliver online tests to assess student achievement)
- Analytics systems – analyze and correlate data across a school district
- Any other software/system/service whose primary purpose/use is not communication

- The merit of this bright line approach, dividing communications tools from non-communications tools, is demonstrated in the pictures contained in the Edline and ePals reply comments, which are also attached to this *ex parte* notice. These pictures demonstrate why the Commission and USAC are facing challenges in administering eligibility and cost allocations for web hosting. The figures demonstrate the same communication between a teacher and students – one is a Web-Based Email example and the other is a Discussion Board on a Teacher Web Page. There is no distinction of any substance between these modes of communication and, based on principles of technology and competitive neutrality, no distinction is justified in terms of e-rate eligibility. A simplified, bright line approach based on "communication" will address the eligibility of both examples while still excluding other categories of software that are not intended for funding.

2. The second question posed by WCB staff was whether the Commission should set a standard cost-allocation discount for all web hosting services, if it determines that web hosting should remain eligible.

- Edline and ePals are amenable to a standard cost allocation discount for web hosted communication services, and suggested that this could be a reasonable solution in their joint comments. If this approach is adopted, it is important that it is applied in a technology

neutral manner to all web-hosted communication services.

- This would be an effective way to simplify (eliminate the need for) cost allocation of the ancillary and/or integral component functionality mentioned above (e.g. content editing features comparable to email, user account administration, etc.). A standard discount also would enable the industry to innovate within the web hosted communications category without having to constantly revise and update the cost allocations. A standard cost allocation discount would help maintain an even playing field, and reduce the burden on USAC.

3. Conclusion.

During yesterday's conversation, Edline and ePals discussed with WCB staff the usefulness of a bright line test that will separate eligible web-hosted communications tools from ineligible non-communications software and systems. Web hosting services that facilitate communication as their primary purpose and use should be eligible, while software/systems that do not facilitate communication as their primary purpose and use should not be eligible. This bright line test will prevent funding for major, potentially costly categories of software/systems (SIS for managing grades/attendance, curriculum, assessment, etc.) that are not primarily communications tools.

After determining basic eligibility using the bright line test, the Commission could then determine whether the eligible web hosted communications tools should be subject to a standard discount. The standard discount could be applied to supporting features, ancillary features, and/or integral component functionality (e.g., content editors comparable to eligible email, user account administration features, etc.) that are part of an eligible web-hosted communications service. Such a standard discount would be helpful to USAC and the entire industry if it means that time consuming and complicated cost allocation will no longer be necessary. Edline and ePals support this result.

Edline and ePals hope that this proceeding results in a level playing field for web-hosted communications services. If the Commission adopts the right framework now, a framework that observes competitive and technology neutrality, then it will be clear as technology evolves that better and more efficient communications tools also will be eligible, while other types of systems that are not primarily used for communication will continue to be ineligible. Edline and ePals thank the WCB staff for their time and consideration of these ideas.

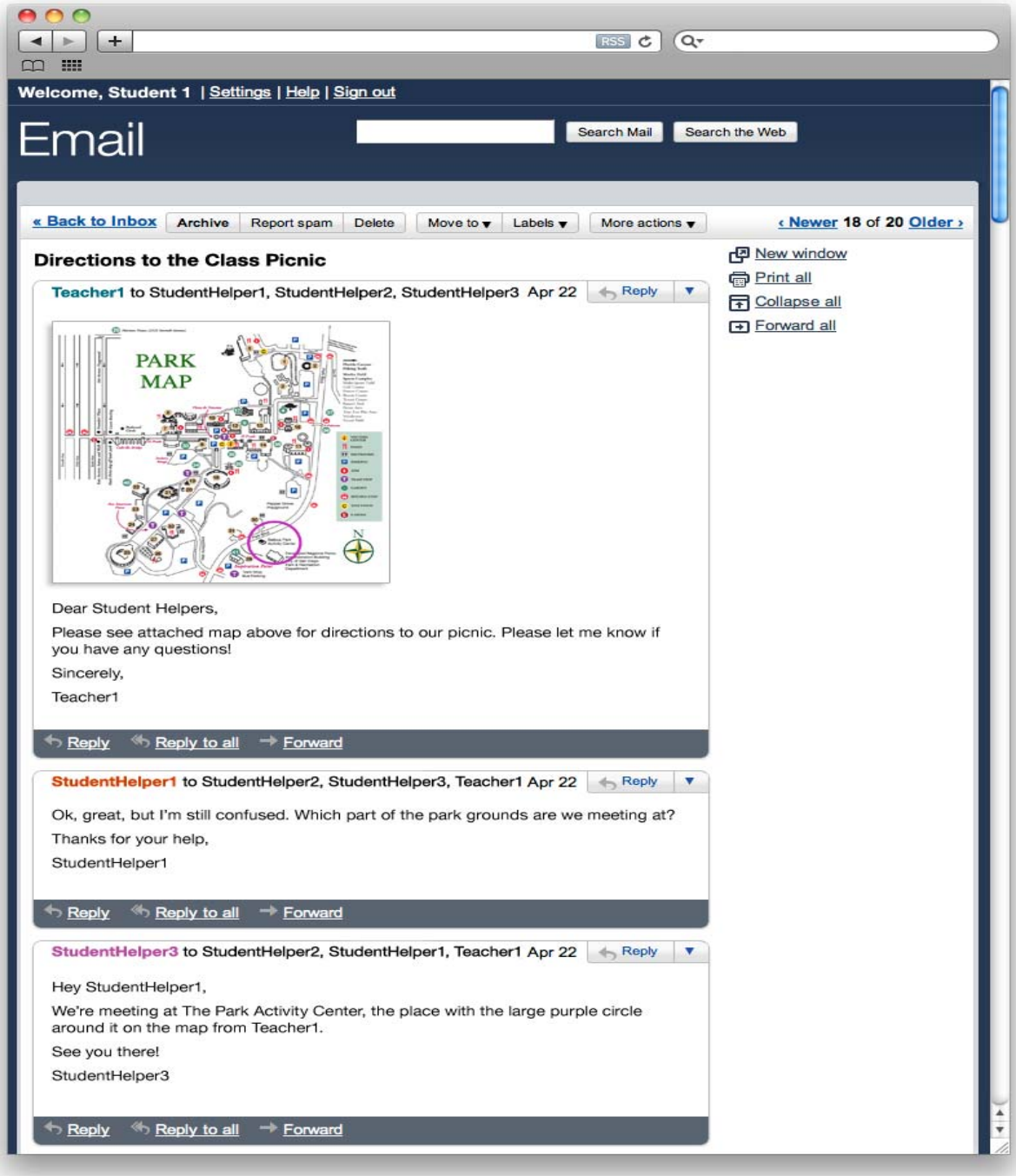
Respectfully submitted,

/s/ Jennifer L. Richter

Jennifer L. Richter

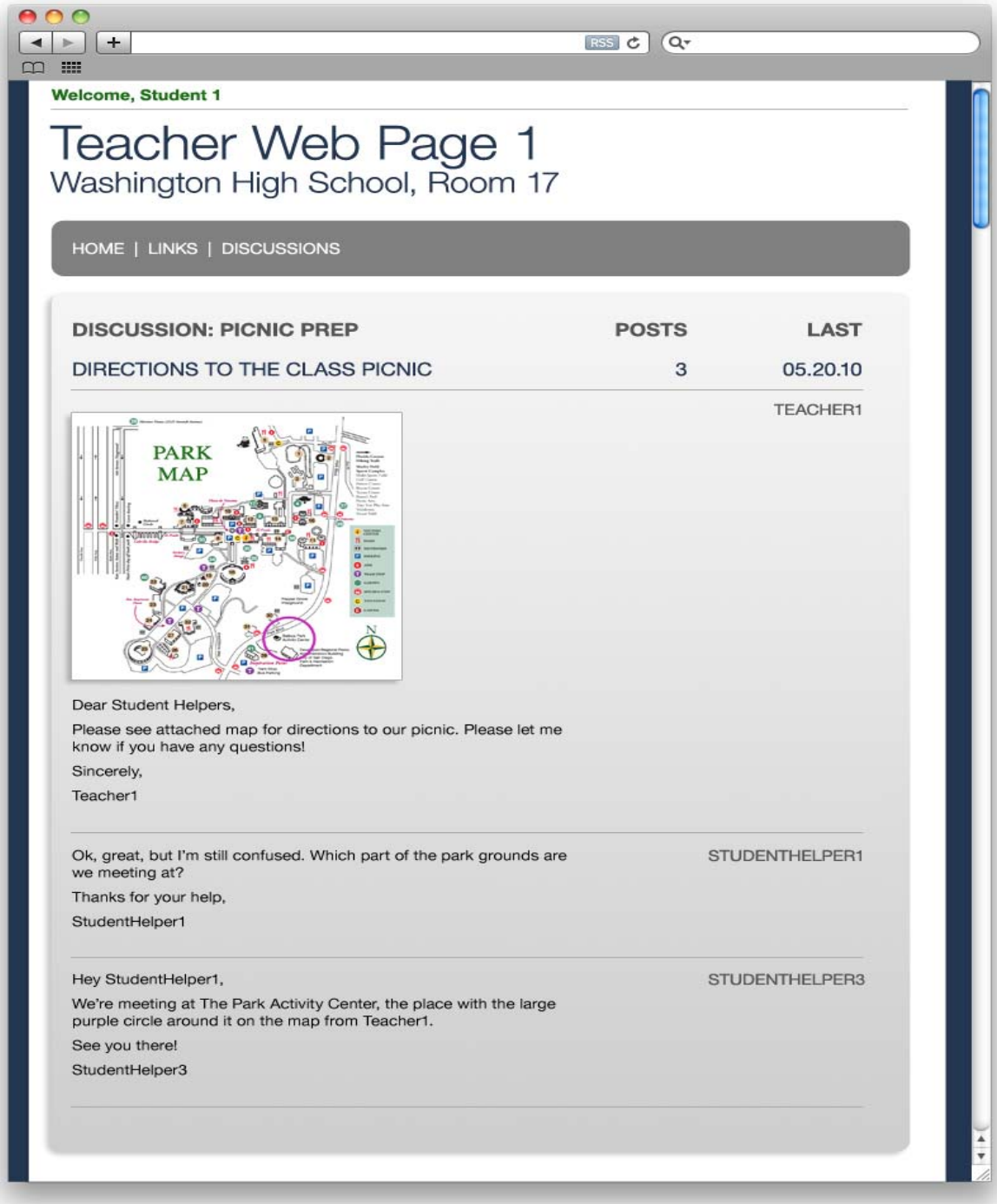
Counsel to Edline and ePals

Web-Mail



Both have as their essential purpose communication, both require authentication/password to enable secure communication to a limited audience, both are rendered on a web page via a web browser, both enable the creation/editing of message content with graphics, and both are far more bandwidth-efficient than voice or voicemail systems.

Discussion Board on Teacher Web Page



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