

August 27, 2010

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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 Thursday, August 26th, Phil Gieseler, Jon Abrams from Edline, Ed Fish from ePals, and Jennifer Richter, counsel to Edline and ePals, met with Christi Shewman of Commissioner Baker's office, Angela Kronenberg of Commission Clyburn's office, Jennifer Schneider of Commissioner Copps office, and Zac Katz of Chairman Genachowski's office (collectively, the "Eighth Floor Wireline Advisors"). The purpose of the meetings was to discuss web hosting issues that are under consideration in the above-referenced dockets.

Maintaining eligibility for web-based communications services is consistent with the Chairman's vision for broadband, technology and education which favors greater openness, greater flexibility, more cost-effective and educationally useful technology, encouraging digital literacy, improving the flow of educational information for teachers, parents and students, and creating opportunities for civic engagement. E-rate eligible web hosting services provide critical support for all of the foregoing goals.

Moreover, web-based communications and websites, in particular, require less bandwidth and fewer personnel to communicate the same information versus other communication mediums such as traditional telephone lines or VOIP. Improved communication efficiencies (and thus a better use of funding resources) are a principal reason why schools, libraries, government and business are all moving to greater reliance on web-based systems to satisfy their communications needs.

In keeping with the Chairman's forward-looking direction and desire to enable innovative communications tools for education, different ways that E-rate schools choose to communicate over the Internet should not have different eligibilities. An inconsistent approach, that does not observe the core principles of competitive neutrality, technology

neutrality and applicant choice, will constrain schools from accessing the most modern, cost-effective and educationally useful electronic tools.

To the extent web hosting remains eligible for E-rate funding as a Priority 1 service, Edline and ePals discussed with the Eighth Floor Wireline Advisors the usefulness of a **bright line test** to separate eligible web-based communications services from ineligible non-communications software and systems. Web-based 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 that are not primarily communications tools.

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 clearly would 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 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 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. Yet, if web hosting services are no longer eligible for E-rate funding, the Web-Based Email communication, which requires far more broadband bandwidth to communicate individually with dozens of recipients, would continue to be eligible, while the more broadband-efficient Discussion Board on a Teacher Web Page would not be eligible. The Commission cannot intend this result. A simplified, bright line approach that uses “communication” as a guide will fairly address the eligibility of both examples while still excluding other categories of software that are not intended for E-rate funding.

Edline and ePals also discussed with the Eighth Floor Wireline Advisors the merit of implementing a “**standard discount**” for web-based communications services which would dramatically simplify administration of eligibility by USAC. After application of the bright line test to determine basic eligibility for a web-based communications service, the standard discount would be applied to supporting features, ancillary features, and/or integral component functionality (e.g., content editors comparable to what is used in email, user account administration features, etc.) that are part of an eligible web-based communications service. Such a standard discount would be helpful to USAC and the entire industry as it would eliminate the need for time consuming and complicated cost-allocation exercises.

If a standard discount is adopted, it is important that it is applied in a technology neutral manner to all web-based communication services. For example, if content editing does not need to be cost-allocated with respect to web-based email, then it should not need cost-allocation with respect to web hosting. This would be an effective and fair way to eliminate the need for cost-allocation of the ancillary and/or integral component functionality mentioned above. A standard discount also would enable the industry to innovate within the web-based communications category without USAC and industry having to continuously revise and update the cost-allocations. A standard cost-allocation discount also would help maintain an even playing field for all web-based communications tools.

Edline and ePals hope that this proceeding results in a level playing field for web-based communications services. If the Commission adopts the right framework now, a framework that observes competitive neutrality, technology neutrality and applicant choice, then it will be

clear as technology evolves that better, more efficient, and more modern communications tools also will be eligible, while other types of software/systems that are not primarily used for communication will not be funded. Edline and ePals thank the Eighth Floor Wireline Advisors for their time and consideration of these ideas.

Respectfully submitted,

/s/ Jennifer L. Richter

Jennifer L. Richter
Counsel to Edline and ePals

cc: Gina Spade
Cara Voth
Mel Blackwell
Eric Flock
Zachary Katz
Christi Shewman
Angela Kronenberg
Jennifer Schneider

Web-Based E-Mail – Eligible Today

The screenshot shows a web browser window displaying an email interface. At the top, there's a navigation bar with "Welcome, Student 1" and links for "Settings", "Help", and "Sign out". Below this is the "Email" header with search boxes for "Search Mail" and "Search the Web". The main content area shows an email thread:

- Teacher1** to StudentHelper1, StudentHelper2, StudentHelper3 Apr 22
Subject: **Directions to the Class Picnic**
Attachments: **PARK MAP**
Dear Student Helpers,
Please see attached map above for directions to our picnic. Please let me know if you have any questions!
Sincerely,
Teacher1
- StudentHelper1** to StudentHelper2, StudentHelper3, Teacher1 Apr 22
Ok, great, but I'm still confused. Which part of the park grounds are we meeting at?
Thanks for your help,
StudentHelper1
- StudentHelper3** to StudentHelper2, StudentHelper1, Teacher1 Apr 22
Hey StudentHelper1,
We're meeting at The Park Activity Center, the place with the large purple circle around it on the map from Teacher1.
See you there!
StudentHelper3

The interface includes standard email actions like "Reply", "Reply to all", and "Forward" for each message. On the right side, there are utility buttons: "New window", "Print all", "Collapse all", and "Forward all". The top of the email list shows "Newer 18 of 20 Older".

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 – Eligible Today, Proposed to be Ineligible

Welcome, Student 1

Teacher Web Page 1

Washington High School, Room 17

HOME | LINKS | DISCUSSIONS

DISCUSSION: PICNIC PREP	POSTS	LAST
DIRECTIONS TO THE CLASS PICNIC	3	05.20.10

TEACHER1

PARK MAP

Dear Student Helpers,
Please see attached map for directions to our picnic. Please let me know if you have any questions!

Sincerely,
Teacher1

Ok, great, but I'm still confused. Which part of the park grounds are we meeting at?
Thanks for your help,
StudentHelper1

Hey StudentHelper1,
We're meeting at The Park Activity Center, the place with the large purple circle around it on the map from Teacher1.
See you there!
StudentHelper3

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.