

November 10, 2010

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation: *Schools and Libraries Universal Service Support Mechanism* (CC Docket No. 02-6)

Dear Ms. Dortch:

On Tuesday, November 9, 2010, Mary Brown of Cisco Systems, Inc. (“Cisco”) and the undersigned, on behalf of Cisco, met in separate meetings with Margaret McCarthy of Commissioner Copps’s office and Christine Kurth of Commissioner McDowell’s office to discuss the treatment of “unbundled warranties” in the *2011 ESL Order*.¹

The purpose of the meeting was to explain the significant confusion in the E-rate marketplace that has resulted from the language in the *2011 ESL Order* regarding “unbundled warranties.” Cisco urged the Commission to clarify that standard contracts for maintenance of internal connections, such as Cisco’s SMARTnet product, are not “unbundled warranties” as defined in the *2011 ESL Order*. These products meet the standards for eligible basic maintenance of internal connections and are the predominant way that networking software and hardware are supported in the enterprise marketplace. These contracts are therefore eligible for support as basic maintenance of internal connections, and the Commission should clarify this issue without delay.

Cisco’s presentation in the meeting followed the attached slides, which were distributed to the attendees.

¹ *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, FCC 10-175 (rel. Sept. 28, 2010).



ESL 2011 and Cisco SMARTnet

Mary Brown, Government Affairs

Today's networking market

- Computer networks are comprised of both hardware *and* software
- Virtually all enterprises today have internal networks – “internal connections” are not just for schools
 - E-rate benefits from economies of scale by being part of the broader enterprise market
 - E-rate is a relatively small part of the overall enterprise networking market
- Networking software (like all software) requires frequent updates and bug patches. Also, users require on-demand technical support.
- Equipment warranties vary, and many networking companies provide ongoing software updates and technical support as a separately priced offering

Standard Industry Practices

| Maintenance in the Marketplace | | | | |
|------------------------------------|---|--|--|--|
| Service Element | Cisco SMARTnet | HP ProCurve Care Packs | Juniper Care | 3Com Guardian |
| Duration of coverage | <ul style="list-style-type: none"> ▪ Annual contracts ▪ Multi-year contracts | <ul style="list-style-type: none"> ▪ Mainly 3 years ▪ Sometimes 1 year | <ul style="list-style-type: none"> • Annual contracts ▪ Multi-year contracts | <ul style="list-style-type: none"> • Annual contracts ▪ Multi-year contracts |
| TAC access | 24x7 | 24x7 | 24x7 | 8x5, 24x7 |
| Web support | Yes | Yes | Yes | Yes |
| Advance hardware replacement (AHR) | <ul style="list-style-type: none"> ▪ 8x5x Next Business Day (NBD) ▪ 8x5x4 ▪ 24x7x4 ▪ 24x7x2 | <ul style="list-style-type: none"> ▪ 13x5x4 or 24x7x4 ▪ 24x7 SW-only service omits AHR | <ul style="list-style-type: none"> • 12x5 NBD • Same Day | <ul style="list-style-type: none"> • 8x5xNBD |
| On-site available | Yes | Yes | Yes | Yes |
| SW updates, bug fixes | Yes | Yes | Yes | Yes |

Source: Cisco Services Market Intelligence and Competitive Intelligence, August 2010

Cisco SMARTNet and Erate: ESL 2011

Reimbursable

Basic maintenance contracts as priority 2 “if, but for maintenance at issue, the internal connection would not function and serve its intended purpose with degree of reliability provided in the market”

Manufacturer’s Warranty up to 3 years on equipment

Upgrades to operating system software

Not reimbursable

Unbundled warranty separate from manufacturer’s warranty that enables broken equipment to be fixed or replaced

Cisco SMARTnet and Erate: ESL 2011

SMARTnet functionality added in RED

Reimbursable

Basic maintenance contracts as priority 2 “if, but for maintenance at issue, the internal connection would not function and serve its intended purpose with degree of reliability provided in the market”

Manufacturer’s Warranty up to 3 years on equipment

Upgrades to operating system software and software support for increased performance, security, efficiency, etc. (e.g., software patches generic or customer-specific, as needed)

Free upgrades when new software features introduced

Proactive bug notification and fixes

Access to live technical assistance desk 7x24x365(via phone)

Access to Cisco knowledge database and online tools

Above applies to eligible equipment

Not reimbursable

Unbundled warranty separate from manufacturer’s warranty that enables broken equipment to be fixed or replaced

Hardware replacement beyond the standard limited 90-day warranty¹

¹Appears to be partially reimbursable if Cisco revised our warranty program to fit FCC’s 3 year warranty period.

2011 ESL's basic maintenance reimbursement methodology

Not the way business is done

2011 ESL: Hourly work actually performed

Basic maintenance contracts: grantees can seek payment for upfront maintenance contracts if able to estimate number of hours, but reimbursement will be only on the basis of work performed

Internal connections costs are recovered on a flat annual fee

SMARTnet – efficiently designed to lower customers' opex

“Gold standard” for network maintenance in the global enterprise market

- SMARTnet: A cost-sharing tool for *all* enterprise customers to access software, tools and information they need to maintain their networks

More than 80% of Cisco S&L customers resolve support issues online

37,000 S&L customer software downloads in Sept. 2010 (7.5m globally) – added features, patches, bug fix

Live online and telephone engineering support is a sunk cost most efficiently shared across the global enterprise customer base 24x7x365

Access to 90,000 technical documents

Spare parts stocked locally at depots around the country – 900 such depots globally

- Forcing reimbursement to “hours” work performed is a problem

Large amount of maintenance is customer-initiated, customer-resolved

Flat fee spreads cost and saves the customer money

Customer maintenance needs are best served through a uniform support model. If provided on a pro-rated or time-and-material basis, Cisco's cost, and price to customers, would rise substantially.



No legal, technical, or policy basis for result in ESL 2011 decision

- FCC provided no notice of its new “must estimate hours” rule
If it had, Cisco would have objected based on all the arguments here
- Unbundling basic maintenance avoids hidden charges and protects the fund
Under the new rule, the same services would be funded if maintenance service fees were bundled into equipment price
- Intrusive rules don’t respect dynamic market competition
- The market has spoken – a standard offer for maintenance with fixed costs spread across all enterprises is more effective, less expensive, more transparent and more predictable for IT budgets.
E-rate should benefit from provider experience and economies of scale in the broader enterprise market

Order or ESL must be clarified without delay

- Standard enterprise offerings that provide basic maintenance of internal connections equipment, such as software downloads, security patches, bug fixes, access to online and/or telephone based technical assistance and tools, are not unbundled warranties. Such offerings are eligible for support as basic maintenance of internal connections, even if priced on a flat-rate basis, to the extent that they provide immediate and continuous access to such software downloads, security patches, bug fixes, access to online and/or telephone-based technical assistance and tools, and otherwise meet the standard test for basic maintenance of internal connections support (“but for the maintenance at issue, the connection would not function and serve its intended purpose with the same degree of reliability ordinarily provided in the marketplace to entities receiving such services without E-rate discounts”).
- Any hardware warranties included in unbundled basic maintenance plans may be removed via a cost allocation from the basic maintenance plan for the 2011 funding year.

Given pending customer RFPs and 2011 funding cycle, FCC needs to clarify its order immediately.



CISCO