

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Draft Eligible Services List for FY2012) CC Docket No. 02-6
)
Schools and Libraries)
Universal Service Program)

**COMMENTS OF EDLINE
DRAFT ELIGIBLE SERVICES LIST, FY2012**

Edline, a leading provider of web hosting services for the educational marketplace, and a participant in the Schools and Libraries (“E-rate”) universal service support program hereby files, through counsel, these comments to the draft Eligible Services List for Funding Year 2012 (the “draft ESL”). The draft ESL was released on June 24, 2011 by the Wireline Competition Bureau (the “Bureau”) of the Federal Communications Commission (the “Commission”).¹

Last year, significant progress was made by the Commission in the *Sixth Report and Order* to observe competitive and technology neutrality and change the manner in which various forms of Internet-based communications, including web hosting services and e-mail services, are treated as part of the E-rate program.²

We are also persuaded that features that facilitate the ability to communicate, such as blogging, emailing over a school or library’s hosted website, discussion boards, and services that may facilitate real-time interactive communications such as instant messaging or chat, should be eligible for E-rate funds as part of a web hosting package. Therefore, we revise the ESL to include those features of web hosting. This decision alters prior decisions limiting web hosting support to hosting a school or library’s static website and excluded the ability to engage in interactive activity such as blogging. We recognize that the transfer of messages across a schools’ hosted website is functionally equivalent to other services that facilitate the ability to communicate such as e-mail, text messaging, voicemail and paging...³

¹ Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program, *Public Notice*, DA 11-1086 (June 24, 2011) (“Public Notice”).

² *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future, Sixth Report and Order*, 25 FCC Rcd 18762, ¶¶100-101 (2010) (“*Sixth Report and Order*”).

³ *Id.*, ¶101.

This year, the Bureau’s suggested edits to the draft ESL for FY2012 were clearly made with the intent of clarification,⁴ but many of the edits do not reflect the Commission’s finding that e-mail service and web hosting service are functionally equivalent. The draft ESL edits also do not implement the Commission’s finding that websites are not static tools to which information is simply “uploaded.” Moreover, the draft ESL for FY2012 does not implement the Commission’s finding that the E-rate program should no longer exclude from eligibility features that allow schools and libraries the “ability to engage in interactive activity such as blogging,”⁵ which was found to be eligible. This “interactive activity” clearly requires the ability to create and edit information, otherwise such communication tools would not be usable. Yet the draft ESL for FY2012 proposes elimination of content editing capabilities from web hosting. Edline suggests edits to the draft ESL to remedy these and other problems.

Edline is grateful to the Bureau for its diligent work last year in assisting the Commission reach its *Sixth Report and Order* conclusions on web hosting. Those conclusions preserved eligibility for web hosting services as “essential” for facilitating learning and training; recognized the eligibility of modern and commonplace web hosting tools that “facilitate the ability to communicate” such as blogs, webmail, discussion boards, instant messaging and chat; and found that e-mail service and web hosting service are functionally equivalent.

By recognizing in the *Sixth Report and Order* the functional equivalence of e-mail service and web hosting service, the Commission embraced two key and mandated principles: (1) competitive neutrality, the concept that similarly situated services, such as e-mail service and web hosting service, must be treated in the same manner for E-rate funding purposes; and (2) technology neutrality, the concept that preferential treatment cannot be given to one form of electronic communication over another – email service over web hosting service, for example. At this juncture, the Bureau must properly implement the Commission’s *Sixth Report and Order* findings into the draft ESL. The ESL must treat functionally

⁴ *Public Notice* at 3 n.16.

⁵ *Sixth Report and Order*, ¶101.

equivalent and similarly-situated e-mail service and web hosting service in the same manner, with neither service receiving preferential treatment over the other. This can be accomplished by: (1) Not separating e-mail service and web hosting service into different sections in the ESL but, instead, including them in the same “function” category; (2) Ensuring that E-rate eligibility for features and capabilities of both services are applied equally – for example, content editing is an inherent feature of both e-mail and web hosting and should be eligible with respect to both; and (3) Making other edits to the ESL that implement the Commission’s findings in the *Sixth Report and Order*, correct inaccuracies, and eliminate vague terminology to clarify E-rate eligibility for Internet Access services.

I. Given The Finding Of Functional Equivalence In The *Sixth Report And Order*, E-Mail Service And Web Hosting Service Should Not Be Separated In Different Sections Of The ESL But Should, Instead, Be Contained In One “Function” Category.

“E-mail service” and “web hosting service” are eligible for E-rate funding as part of “Internet Access” in the draft ESL, but the two services, both of which facilitate the ability to communicate over the Internet, are proposed to be contained in two different sections. In the draft ESL, the Bureau proposes to place web hosting and other services into a new “Internet-Related Services” section because these services “do not, on their own, provide basic conduit access to the Internet.”⁶ E-mail services were left in a more general Internet Access section.

As discussed below, placing web hosting in this category is not technically justified but, as important, this distinction could be meaningful and detrimental to web hosting services over time and, therefore, should be corrected. Just last year, there was extensive vetting of web hosting eligibility. The Commission determined to retain eligibility for web hosting because it found that the interactive, Internet-based communications offered by web hosting service are “essential for facilitating teaching and learning as well as communication among the entire school community.”⁷ Given the finding of functional equivalence in the *Sixth Report and Order*, e-mail service and web hosting service should not be separated in

⁶ *Id.* at 3.

⁷ *Sixth Report and Order*, ¶100.

different sections of the ESL but should, instead, be contained in the same section, in one “function” category. Such a result will, to the greatest extent possible, ensure that disparate treatment of these functionally equivalent services does not occur now, or in the future.

In addition, there is no policy justification that supports separating e-mail service and web hosting service into different ESL sections. Competitive neutrality requires that similarly-situated services are treated in the same manner. Accordingly, the Bureau should not suggest placing e-mail service and web hosting service in markedly different categories – one of which is, generally, akin to Internet Access, and the other is the more remote “Internet-Related Services.”

Moreover, there is no technical justification that supports separating the services in the ESL. Contrary to the Bureau’s assertion in the *Public Notice* that web hosting and other services belong in the “Internet-Related Services” section because these services “do not, on their own, provide basic conduit access to the Internet,”⁸ e-mail service does not provide conduit access to the Internet. There is no technical argument that would support the conclusion that e-mail service is closer to the conduit than web hosting service – both of these services facilitate Internet-based communications, and neither of them provides conduit access (even though they are essential communication tools that provide Internet access with its value). Given the functional equivalence of e-mail service and web hosting service, it violates competitive neutrality for web hosting to be treated differently and relegated to the “Internet-Related Services” category without a defensible technical or policy justification. Edline’s suggested edits to the draft ESL, contained in Attachment 1, place e-mail service and web hosting service in the same “function” category in order to ensure similar treatment.

II. Because They Are Functionally Equivalent, E-Mail Service And Web Hosting Service Also Should Have The Same Eligibilities, Including For Content Editing.

The draft ESL perpetuates a long-standing problem regarding inconsistent treatment of e-mail service and web hosting service that was seemingly fixed in the *Sixth Report and Order*. In a number of ways,

⁸ *Public Notice* at 3.

the ESL affords different treatment to e-mail service and web hosting. For example, the draft ESL states that certain “content editing” features are not eligible as part of web hosting services,⁹ yet such features remain eligible as part of e-mail service. As Edline discussed with the Bureau many times leading up to the *Sixth Report and Order*, both e-mail service and web hosting services (including webmail, blogs, discussion boards, etc.) employ the basic ability to create, edit, sort, view, and transmit content, including HTML, graphics and other media. These are fundamental features of all Internet-based interactive communications services. It violates technology neutrality that content editing features, which are integral to the functioning of both services, are eligible for e-mail service but not web hosting service. Such a result clearly affords preferential treatment to e-mail services over web hosting services, violates technology neutrality, and betrays the finding of functional equivalence for these services that the Commission found in the *Sixth Report and Order*. It also leads to absurd results. It cannot be that the Commission intends to make web hosting services eligible but make ineligible the essential features that make the service possible, such as content editing. Blogs, discussion boards, even simple web pages today have web-based interfaces that allow users to publish and edit content on their pages – just like e-mail. Making inherent, basic features of these communication tools ineligible is impracticable and without a basic recognition or understanding of how these tools work.

Although the Bureau states in the *Public Notice* that it is not intending to alter eligibility for web hosting,¹⁰ the exclusion of content editing for web hosting, but not for e-mail, in the draft ESL for FY2012 does alter eligibility for web hosting from last year. As noted above, the Commission found in the *Sixth Report and Order* that E-rate eligibility should extend to features that allow schools and libraries the “ability to engage in interactive activity such as blogging.”¹¹ This “interactive activity” clearly requires the ability to

⁹ In the category of “NOT Eligible for E-rate Funding as Internet Access Services,” the draft ESL states that any “web hosting features, software applications, end user file storage and **content editing features** beyond 1) the storage of applicant-provided content, 2) a web interface for uploading files, and 3) the bandwidth access that allows schools or libraries to display their web pages are NOT eligible.” Draft ESL at 11.

¹⁰ *Public Notice* at 3 n.16.

¹¹ *Sixth Report and Order*, ¶101.

create and edit information, otherwise such communication tools would not be usable. Yet the draft ESL for FY2012 attempts to eliminate content editing from eligibility for web hosting. This result is at odds with the Commission's findings in the *Sixth Report and Order* and needs correction.

Moreover, as discussed with the Bureau and the Commission last year, all forms of web-hosted communications, including e-mail, are forms of web-hosted pages, accessible from a standard web browser. Gmail, Yahoo Mail, and Hotmail, as well as similar services specifically targeted to the educational market, are examples of these types of e-mail-centric web-hosted communications tools. Virtually all such e-mail services today utilize HTML code, which is the language of web hosting. The ability to create, edit, sort, search, view, send, and transmit content, is a fundamental part of not only e-mail, but also other web-hosted communications such as blogs, web pages, and discussion boards.

Last year, Edline shared with the Bureau and the Commission examples of two types of communication between a teacher and students covering the same subject matter – directions to a class picnic. (See Attachment 2 for the slides.) In one example, the communication is accomplished through Internet-based e-mail service. In the other example, the communication is accomplished through a discussion board on a teacher's web hosting service. Both forms of communication containing directions to the class picnic, the e-mail and the discussion board, have communication as their essential purpose, both require authentication / password to enable secure communication to a limited audience, both are rendered on a web page via a web browser, and both require content creation and content editing with text, HTML and graphics in order to communicate. There is no distinction of any substance between these two communications, and, based on principles of technology and competitive neutrality, the communications should enjoy the same E-rate eligibility. Indeed, this is the determination of functional equivalence the Commission made in the *Sixth Report and Order* after having the benefit of viewing these examples. Now the ESL must implement this functional equivalence, ensuring that these similarly situated services are treated consistently, with content editing eligibility for both services and no unjustified favoritism for e-mail service over web hosting service.

III. Edline’s Suggested Changes To The Draft ESL, As Reflected In Attachment 1, Are Intended to Respect Both The Commission’s Findings In The *Sixth Report and Order*, And Technology Neutrality and Competitive Neutrality.

Attachment 1 contains Edline’s suggestions for the draft ESL that seek to ensure that the Commission’s policy decisions from the *Sixth Report and Order* are implemented in the ESL. The changes will ensure that functionally equivalent e-mail service and web hosting service are treated in the same manner for E-rate funding purposes and that e-mail is not given preferential treatment. Finally, the changes correct a number of technical inaccuracies and vagaries in the draft ESL that should help to foster greater understanding of what is eligible and what is ineligible in the Internet Access category.

Edline suggests combining e-mail service and web hosting service into a single “function” category titled Internet-Based Interactive Communications Services. Edline also suggests removal of “content editing” from the list of ineligible items for web hosting. Content editing is an integral function of both web hosting service and e-mail service. Moreover, the *Sixth Report and Order* explicitly determined that the Commission would make eligible the “ability to engage in interactive activity such as blogging.” Such interactive activity requires “content editing” in order to work, and cannot now be declared ineligible. Any other result reverses the Commission’s findings from last year. Edline also suggests a number of additional important edits to the draft ESL:

- Teachers and staff were added to the list of critical members of the school stakeholder community that benefit from web hosting services. Just as they are eligible to utilize e-mail communications, there is no limit on their ability to utilize web pages, blogs, discussion boards, etc. as a communication medium.
- The dividing line for eligibility of web hosting was simplified and made more understandable by adding the requirement that eligible tools / services must also “facilitate communication as their primary purpose and use.” This limitation simply and easily eliminates many categories of software and services that may be “web-based” or use a “web-interface” but are not used primarily for communication and are clearly not eligible (e.g. financial systems, student data systems, or curriculum). Adding this additional limitation will make the draft ESL easier to implement, easier to follow, and reduce the need for complex language.
- Eligibility to “upload” content to a website was changed to “publishing” content. The Commission recognized in paragraph 101 of the *Sixth Report and Order* that websites are not static. They are not simply repositories for pages that are created offline and uploaded later. Websites are dynamic communications tools that are constantly changing and to which information is continuously published and edited. For example, blogs are not uploaded, they are edited on the website in real

time. This is, again, why content editing must be eligible for web hosting service. This is also consistent with the Commission's findings in the *Sixth Report and Order* about eligibility for interactive activities which require content editing in order to work.

- The language regarding password protection was edited because it potentially contradicted the Commission's password protection decision from 2009, and was confusing / ambiguous. Language directly from the 2009 Order was incorporated instead.¹²
- The edits clarify that charges for proprietary content, such as online curriculum or information services, are ineligible. Declaring "Internet content" ineligible is overly broad, vague, and will create unnecessary confusion and complexity. Certainly the content displayed in webmail, or on a school's website, is technically speaking "Internet content" and, as an integral component of these services, must be eligible.
- Edline suggests eliminating the exclusion for "*Software, services or systems used to create or edit Internet content or charges for the creation of information. Internet access that provides features or content that go beyond conduit access to the Internet.*" As the Commission is aware, e-mail and web hosting services are designed as integrated solutions that include computers, access to the Internet and enabling software. Software is a component of all of these services. The items listed above, which are ineligible per the draft ESL, are all inherent in e-mail services and web hosting services. It cannot be that the Bureau intends these essential features to be ineligible. Perhaps this language is historical and has been rendered ineffective over time. In any case, the language needs either deletion or clarification. Please note that Edline recognizes that stand-alone, installed software packages such as MS Word or Adobe Photoshop for content creation have never been eligible for email or web hosting service, and Edline does not advocate any changes to that approach. In addition, the language in the draft ESL notes that the services cannot go beyond conduit access but, as covered in the comments, both e-mail service and web hosting service do just that. However the Bureau determines to handle this issue, competitive neutrality and technology neutrality require the same treatment for both e-mail service and web hosting service. If the Bureau determines to keep this language in the ESL, then for purposes of competitive and technology neutrality, it must include web hosting in the same parenthetical that creates an exception for e-mail.¹³
- Terms such as "distance learning" and "online collaboration" and "online classrooms" were deleted because they have no specific technical definition and are therefore too broad and vague (they are more akin to descriptions of what users do with technology tools rather than actual tools or services themselves. Schools and libraries can conduct "distance learning" with a simple and eligible blog and teacher page, or with a full-featured suite of ineligible tools such as online quizzes, gradebooks, and other applications. A group of teachers or students can "collaborate" via webmail, or with advanced video conferencing and web conferencing. If the draft ESL wishes to exclude video conferencing and web conferencing (such as WebEx, GoToMeeting), it should avoid vague statements about "collaboration" or "distance learning" and simply state which specific tools are ineligible to provide clarity.

¹² See *Schools and Libraries Universal Service Support Mechanism, Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 6562, ¶22 (2009).

¹³ The Commission is aware that software is a critical component of both web hosting services and e-mail services. The basic components of all web-hosted or web-based communications services, including e-mail and voicemail, are computers, access to the Internet, and enabling software. These components work together as part of an integrated and comprehensive system. See Edline and ePals Ex Parte Letter, Dkt. Nos. 02-6 and 09-51 (dated Aug. 30, 2010).

Finally, Edline proposes the use of an updated definition of Internet Access from the U.S. Code that was used by the Commission as part of its recent Internet Policy Statement in 2005. The draft ESL includes a proposed definition of Internet access from 1997 that was based on “what electronic publishing was not.”¹⁴ Unfortunately, the description does not accurately depict or clearly describe the Internet as it exists today. One of the principle problems with using this definition is that it suggests that e-mail is part of basic conduit access, which it is not.¹⁵ As stated above, this distinction then results in different placement and treatment for e-mail service versus web hosting service in the ESL because, as the Public Notice states, the Commission moved web hosting and other services to a new Internet-Related Services category on the ground that such services do not, “on their own, provide basic conduit access to the Internet.”¹⁶ E-mail also does not provide basic conduit access to the Internet. This outdated definition of Internet Access, which is factually inaccurate, should not be used. Instead, the Commission should use one of the definitions of Internet access that was relied upon in the Commission’s Internet Policy Statement in 2005.¹⁷ The Policy Statement contained at least three different viable definitions for the Internet. The ESL could simply note that Internet Access is “access” to the Internet, and the Internet is defined as follows:

The Internet is “the international computer network of both Federal and non-Federal interoperable packet switched data networks.” 47 U.S.C. § 230(f)(1). The Internet is also described as “the combination of computer facilities and electromagnetic transmission

¹⁴ In its 1997 Order, the Commission adopted a definition for what was not electronic publishing as a way to initiate funding for Internet access: “We note that Congress described the conduit services we seek to cover in another context in the 1996 Act. That is, in listing exceptions to the definition of “electronic publishing” in section 274 of the Act, Congress described certain services that are precisely the types of “conduit” services that we agree with the Joint Board should be available to eligible schools and libraries at a discount.” *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776 ¶444 (1997).

¹⁵ A separately-costed e-mail service was not added to the Eligible Services List until 2001. *Compare* Eligible Services List, dated Jan. 24, 2001, *available at* http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_012401.pdf, at 35 (indicating separately-costed e-mail account fees were not eligible) *with* Eligible Services List, dated Oct. 17, 2001, *available at* http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101701.pdf, at 13 (indicating separately-costed e-mail account fees were eligible). Prior to this time, a basic e-mail service and /or basic web hosting service could be included in basic conduit access as an ancillary service, but separate charges for multiple accounts were not eligible. It is factually incorrect that separate charges for e-mail were eligible from the inception of the E-rate program.

¹⁶ *Public Notice* at 3.

¹⁷ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, Policy Statement*, 20 FCC Rcd 14986 (2005).

media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol or any successor protocol to transmit information.” 47 U.S.C. § 231(e)(3). The Supreme Court has described the Internet as a “network of interconnected computers.” *National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 974 (2005).

IV. Conclusion.

In these comments to the ESL, and in Edline’s suggested edits to the draft ESL, Edline is not proposing any kind of new eligibility for web hosting services, only those changes that are necessary in order to implement the findings of the Commission in the *Sixth Report and Order*. Where needed, Edline offers technical corrections to language describing Internet Access that is now outdated and incorrect. Edline also suggests an additional limitation to the definition of web hosting that will restrict eligibility and ensure categories of software and services that do not facilitate communication are not eligible.

Last year, significant progress was made by the Commission in the *Sixth Report and Order* to observe competitive and technology neutrality and change the manner in which various forms of Internet-based communications, including web hosting services and e-mail services, are treated as part of the E-rate program. At this juncture, the ESL must properly implement the Commission’s findings and treat functionally equivalent and similarly-situated e-mail service and web hosting service in the same manner, with neither service receiving preferential treatment over the other. This can be accomplished by: (1) Not separating e-mail service and web hosting service into different sections in the ESL but, instead, including them in the same “function” category; (2) Ensuring that E-rate eligibility for features and capabilities of both services are applied equally – for example, content editing is an inherent feature of both e-mail and web hosting and should be eligible with respect to both; and (3) Making other edits to the ESL that implement the Commission’s findings in the *Sixth Report and Order*, correct inaccuracies, and eliminate vague terminology so that E-rate eligibility for all Internet Access services is more easily understood.

Respectfully submitted,

_____/s/_____

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ATTACHMENT 1

Edline's Proposed Edits to the Eligible Services List for Funding Year 2012

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Internet Access

Eligibility Requirements for All Internet Access Services:

Internet access.

~~See 47 C.F.R. § 54.5, includes the following elements:~~

~~(1) The transmission of information as common carriage;~~

~~(2) The transmission of information as part of a gateway to an information service, when that transmission does not involve the generation or alteration of the content of information, but may include data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services, and that do not affect the presentation of such information to users; and~~

~~(3) Electronic mail services (e-mail).~~

Internet Access means, generally, access to the Internet. The Internet is “the international computer network of both Federal and non-Federal interoperable packet switched data networks.” 47 U.S.C. § 230(f)(1). The Internet is also described as “the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol / Internet Protocol or any successor protocol to transmit information.” 47 U.S.C. § 231(e)(3). The Supreme Court has described the Internet as a “network of interconnected computers.” *National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 974 (2005).

Support in this funding category is generally only available for basic conduit access to the Internet but is not available for content, equipment purchased by applicants, and services beyond basic conduit access to the Internet, **except as expressly provided herein**. Support may also be available for selected services that are an integral component part of an Internet Access service, and other services that the Commission has designated as eligible for discounts.

Maintenance and technical support appropriate to maintain reliable operation is eligible for discount when provided as a component of an eligible Internet access service. Please see the Miscellaneous section of this document for additional entries applicable to Internet Access, such as charges for installation and configuration.

Function	Description
Internet-Based Interactive Communications	The following Internet-based services, which facilitate interactive communication, are eligible:

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<p>Services</p> <p>E-Mail Service</p>	<p><u>E-mail service.</u></p> <p>E-mail service is eligible. E-mail service is often included in the cost of basic conduit access to the Internet or may be provided at a separate cost, either as a fixed charge and/or on a per-user or other basis.</p> <p>Some e-mail services may include substantial ineligible features, such as collaboration tools, and services to ineligible users. Funding is limited strictly to the eligible portion of an electronic mail service (i.e., the part of the service that provides for the transmission of text messages and other information). E-mail archiving is not eligible for discount. [See Drafting Note 1].¹</p> <p><u>Web hosting service.</u></p> <p>Web Eligible web hosting service provides a means for services enable a school or library to display content on communicate over the Internet for the public or school stakeholders (students, and parents parents, teachers and staff), and facilitate communication as their primary purpose and use. When included with a web hosting service, interactive communication features such as blogging, webmail, instant messaging, and chat are eligible. Funding is available for the part of the service that provides for transmission of messages and other information. [See Drafting Note 2].²</p> <p>An eligible web hosting service provides schools and libraries: 1) the ability to store applicant provided content, 2) a</p>
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¹ DRAFTING NOTE 1: HTML and graphics are commonplace for all e-mail and have been for many years. This definition is no longer technically accurate. A focus on text communication no longer aligns with the broad types of communication now taking place.

² DRAFTING NOTE 2: Teachers and staff were added to the list as they are critical members of the school stakeholder community. Teachers and staff need to use communications tools (like e-mail) and are clearly stakeholders/users. Also added is the additional limitation that web hosting services must facilitate communication as their primary purpose and use. This limitation is useful because it eliminates many categories of software and services that may be web-based or use a web interface but do not facilitate communication as their primary purpose and use and are clearly not eligible.

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	<p>web interface for uploading files publishing content, [See Drafting Note 3]³ and 3) the bandwidth access that allows schools or libraries to display their web pages. We clarify that web pages protected by a username and password are eligible for funding as part of web hosting services. The fact that a school or library restricts access to all or part of its website to certain users—e.g., school administrators, teachers, librarians and students [and parents]—does not render the service ineligible for E-rate funds. [See Drafting Note 4].⁴ Password-protected pages are allowed to prevent full public access, but must be available to students or their parents at a minimum (password-protected pages for a library would be for patrons of that library). Password-protected pages will NOT be eligible if established exclusively for librarians, administrators, school officials or teachers to access ineligible tools.</p>
<p>Basic Conduit Access to the Internet</p> <p>Internet Access</p>	<p>Basic conduit access to the Internet is eligible regardless of technology platform. Access technologies include but are not limited to:</p> <ul style="list-style-type: none">• Broadband over Power Lines (BPL)-enabled Internet access service

³ DRAFTING NOTE 3: As the Commission recognized in paragraph 101 of the *Sixth Report and Order*, websites are not static. The term “upload” is anachronistic, and does not reflect the way websites and related web-hosted communications are updated and managed. Websites are not simply repositories for pages that are created offline and uploaded later. Websites are dynamic communications tools that are constantly changing and to which information is continuously published and edited. For example, blogs are not uploaded, they are edited on the website in real time. The term “publish” more accurately reflects how users interact with a web page, blog, or discussion board and does not refer to one, anachronistic method (just as FTP would be equally narrow).

⁴ DRAFTING NOTE 4: The last two sentences are taken from the Commission’s decision on password protection, as found in the December 1, 2009 *Schools and Libraries Universal Service Support Mechanism, Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 6562, ¶22 (2009) (“2009 Order”). Passwords are used both to administer websites and appropriately target communications among school stakeholders. It is not correct to suggest, as the draft 2012 ESL did, that students and parents must have access to all password-protected portions of a school’s website. The 2009 Order regarding password protection did not require student and parent access. Moreover, the 2009 Order indicates that restricting access to content, or a tool, via password protection is not what determines eligibility. Questions of eligibility are concerned with what lies behind a password and whether or not it is eligible. If part of a web hosting service is eligible (a discussion board, for example) then a “discussion board” may be restricted or public. The converse also is true. A library automation system, financial system, or grading system is clearly not eligible, irrespective of whether it may be web-based, or may utilize password protection. The draft ESL would be improved if it focused simply on what systems/services are eligible. The use of password protection is clearly not determinative of eligibility by itself.

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	<ul style="list-style-type: none">• Cable Modem• Digital Subscriber Line (DSL)• Fiber• Satellite service• Telephone dial-up• T-1 lines• Wireless <p>Eligible Internet access may include features typically provided for when provided as a standard component of a vendor's Internet access service. Such features may include Domain Name Service, Dynamic Host Configuration, and basic firewall protection against unauthorized use and access. Firewall protection may not be provided by a vendor other than the Internet access provider and may not be priced out separately.</p> <p>Basic conduit access to the Internet may be used to access Internet-based distance learning and video conferencing services.</p> <p>A wireless Internet access service is eligible under the same provisions as wired access to the Internet.</p> <p>A Wide Area Network can be eligible for funding as a part of Internet access if the service is limited to basic conduit access to the Internet and the offering is the most cost-effective means of accessing the Internet.</p> <p>A wireless Internet access service designed for portable electronic devices is eligible if used for educational purposes and the off-campus use is removed by cost allocation. Applications (including GPS) for wireless devices are not eligible for discount. Service/Data charges dedicated solely to the provision of these applications are not eligible and require cost allocation.</p> <p>Mobile hotspot service designed for portable electronics is eligible if used for educational purposes, if off-campus use is cost-allocated, and when service is not duplicative of other wireless Internet access service. Hardware costs of the mobile hotspot embedded in or connected to the end-user device are not eligible.</p>
Internet –Related Services	These services may be purchased separately or as part of a bundled Internet access service.

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	<ul style="list-style-type: none">• Interconnected Voice over Internet Protocol (the regulatory classification of interconnected VoIP service does not affect the inclusion of this service as an eligible service in this category)• Lit or (see Telecommunications category)• Web hosting service provides a means for a school or library to display content on the Internet for the public or school stakeholders (students and parents). An eligible web hosting service provides schools and libraries: 1) the ability to store applicant provided content, 2) a web interface for uploading files, and 3) the bandwidth access that allows schools or libraries to display their web pages. Password-protected pages are allowed to prevent full public access, but must be available to students or their parents at a minimum (password-protected pages for a library would be for patrons of that library). Password-protected pages will NOT be eligible if established exclusively for librarians, administrators, school officials or teachers to access ineligible tools. When included with a web hosting service, interactive communication features, such as blogging, webmail, instant messaging, and chat, are eligible. [Drafting Note 5].⁵• Domain name registration is eligible if it is necessary for the creation of a school or library website.
NOT Eligible for E-rate Funding as Internet Access Services	<p>The following services are NOT ELIGIBLE for discount:</p> <ul style="list-style-type: none">• Services that go beyond basic conduit access to the Internet, such as Virtual Private Network services (except that, for purposes of clarification, Internet-Based Interactive Communications Services listed herein, which go beyond basic conduit access, are eligible)• Online Backup Solutions• Internet content [See Drafting Note 6A].• Software, services, or systems used to create or edit Internet content or charges for the creation of information. Internet access that provides features or content that go

⁵ DRAFTING NOTE 5: We propose to relocate web hosting services to “Internet-Based Interactive Communications Services” and propose the revisions explained in Drafting Note 1.

	<p>beyond basic conduit access to the Internet. (E-mail service and e-mail account fees, however, are not considered Internet content.) [See Drafting Note 6B].⁶</p> <ul style="list-style-type: none">• Applicants may accept an Internet Access service with minimal content included if the content meets the limitations for Ancillary Use. See Special Eligibility Conditions below for further information on Ancillary Use.)• Costs attributable to the creation or modification of information, such as a web site creation fee or content maintenance fees.• Web hosting features and applications. Any web hosting features, software applications, end user file storage, and content editing features beyond 1) the storage of applicant-provided content, 2) a web interface for uploading files, and 3) the bandwidth access that allows schools or libraries to display their web pages are NOT eligible. This does not include password protected pages, the features that facilitate the ability to communicate (e.g., blogging, e-mailing over a
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⁶ DRAFTING NOTE 6:

6A: The phrase, "Internet Content" is so broad, that if all Internet Content is declared ineligible then, for example, Internet content that is contained in an e-mail would be ineligible. Overall, we believe the Commission's goal is to exclude charges for proprietary content services that are available over the Internet, such as curriculum. Those exclusions are more simply listed in other parts of the draft ESL.

6B: Edline suggests eliminating the exclusion for "Software, services or systems used to create or edit Internet content or charges for the creation of information. Internet access that provides features or content that go beyond conduit access to the Internet." As the Commission is aware, e-mail and web hosting services are designed as integrated solutions that include computers, access to the Internet and enabling software. Software is a component of all of these services. The items listed above, which are ineligible per the draft ESL, are all inherent in e-mail services and web hosting services. It cannot be that the Bureau intends these essential features to be ineligible. Perhaps this language is historical and has been rendered ineffective over time. In any case, the language needs either deletion or clarification. Please note that Edline recognizes that stand-alone, installed software packages such as MS Word or Adobe Photoshop for content creation have never been eligible with e-mail or web hosting service, and we are NOT advocating any changes to that approach, but perhaps the draft ESL should be more explicit on this point and eliminate the confusing language identified by this Drafting Note. However the Bureau determines to handle this issue, competitive neutrality and technology neutrality require the same treatment for both e-mail service and web hosting service. In addition, the language in the draft ESL notes that the services cannot go beyond conduit access but, as covered in the comments, both e-mail service and web hosting service do just that. If the Bureau determines to keep this language in the ESL, then for the purpose of competitive and technology neutrality, it must include web hosting in the parenthetical that creates an exception for e-mail.

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	<p>school or library's hosted website, and discussion boards) and services that may facilitate realtime interactive communication (e.g., instant messaging or chat) when these are included in a web hosting service. [See Drafting Note 7].⁷</p> <p>o Examples of ineligible web hosting features and applications include, but are not limited to: 1)</p> <ul style="list-style-type: none">• Ineligible as Internet-Based Interactive Communications Services. [See Drafting Note 8]⁸• Services or systems that do not facilitate web-based communication as their primary purpose and use, including student data systems, teacher grading software, or proprietary online curriculum, are not eligible. [See Drafting Note 9].⁹• Third-party created content including, videos, recorded classes, online textbooks, curriculum or educational software programs, or other content or curriculum created and packaged by third party vendors; <p>2) Any features related to</p> <ul style="list-style-type: none">• School/library administration or school/library operational systems such as student information systems, gradebooks or grading systems, financial systems, or student attendance
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⁷ DRAFTING NOTE 7: The deleted language already is contained in what is eligible and therefore does not need to be stated again, in the negative, to describe what is not eligible. This is confusing and it is not the approach taken for e-mail. Web hosting (like e-mail) inherently includes many more features than those what can be captured in a general three sentence description and, thus, this approach is bound to fail. The draft language would prohibit integral content editing features from web hosting, when the same is allowed for e-mail. That language was stricken. In addition, many of the features listed are not, technically, web hosting “features,” so this language was changed. Instead of using the definition of what is eligible in the negative to demonstrate what is ineligible (confusing and impractical), we have proposed an additional limitation that web hosting services must facilitate communication as their primary purpose and use. This additional limitation is useful because it eliminates many categories of software and services that may be web-based or use a web interface but do not have communication as their primary purpose and use and are clearly not eligible.

⁸ DRAFTING NOTE 8: The items listed are not “features” of web hosting. Thus, we have changed the title.

⁹ DRAFTING NOTE 9: See Drafting Notes 1 and 7.

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	<p>files. [See Drafting Note 10].¹⁰ functions such as the capabilities for data input or retrieval (e.g., searching of databases for grades, student attendance files, or other administrative reports) and 3) Applications or software for collaborative meetings or online classes.</p> <ul style="list-style-type: none">• Charges for distance learning or video conferencing utilities, such as web meetings or online collaboration solution-s that are conducted through WebEx or GoToMeeting, even if provided via the Internet [See Drafting Note 11].¹¹• Internet2 membership fees• Training regarding the use of the Internet• Costs for training provided via the Internet• A point-to-point connection (e.g., ISDN line) for distance learning or video conferencing is NOT eligible as Internet Access and may only be provided by telecommunication carriers (unless it is provided via fiber or dark fiber).• Electronic library/on-line public access and associated software• Applications (including GPS) for wireless devices are not eligible for discounts. Charges for Internet access service used solely for the provision of these applications are also not eligible. <p>Separate pricing for the following components when not included in the standard configuration of an Internet access service is NOT ELIGIBLE:</p> <ul style="list-style-type: none">• Caching• Content filtering• Firewall service
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¹⁰ DRAFTING NOTE 10: The language “any features related to” was confusing and was deleted. However, the charges related to school and library administration systems are clearly not eligible and the list was expanded as further explanation of what is not eligible.

¹¹ DRAFTING NOTE 11: Terms such as “distance learning” and “online collaboration” and “online classrooms” were deleted because they have no specific technical definition and are therefore too broad and vague (they are more akin to descriptions of what users do with technology tools rather than actual tools or services themselves). Schools and libraries can conduct “distance learning” with a simple and eligible blog and teacher page, or with a full-featured suite of ineligible tools such as online quizzes, gradebooks, and other applications. A group of teachers or students can “collaborate” via webmail, or with advanced video conferencing and web conferencing. If the draft ESL wishes to exclude video and web conferencing (such as WebEx, GoToMeeting), it should avoid vague statements about “collaboration” or “distance learning” and simply state which specific tools are ineligible to provide clarity for applicants and service providers.

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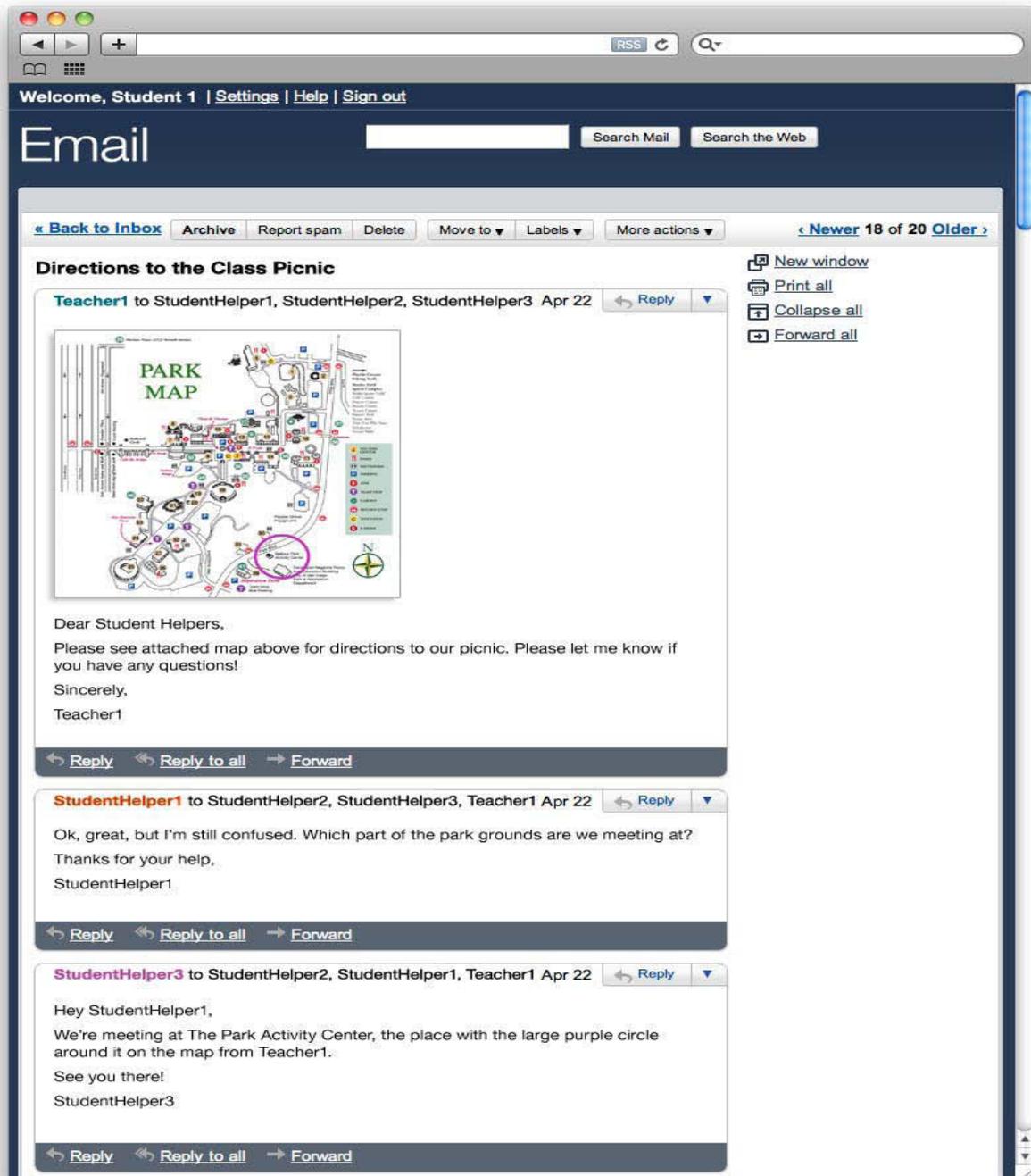
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	<ul style="list-style-type: none">• Web Casting <p>Please see the Miscellaneous section of this document for additional entries applicable to Internet access. For example, finance charges and termination charges are not eligible.</p>

ATTACHMENT 2

Two Examples of Teacher – Student Communications

Internet-Based E-Mail Service



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, and both enable the creation / editing of content with text, HTML and graphics.

Discussion Board on Teacher's Web Hosting Service

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

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, and both enable the creation / editing of content with text, HTML and graphics.

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 15th day of July 2010, a copy of the foregoing "Comments" has been served via electronic mail, to the following:

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