

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Schools and Libraries Universal Service)
Support Mechanism) CC Docket No. 02-6

**REPLY COMMENTS OF AT&T ON THE FY 2012 DRAFT ELIGIBLE SERVICES LIST FOR
SCHOOLS AND LIBRARIES UNIVERSAL SERVICE PROGRAM**

AT&T Services, Inc. (“AT&T”) submits these reply comments in response to the Commission’s Public Notice seeking comment on USAC’s proposed Eligible Services List (ESL) for Funding Year 2012.¹

1. Form 470 Simplification

AT&T agrees with the State E-rate Coordinators’ Alliance’s (“SECA’s”) suggestion to affirmatively state that funding will not be denied as a result of applicants selecting the incorrect service category on Form 470. As AT&T has stated previously, the Form 470 should only serve as a notice from applicants that they are seeking to procure services and the options selected on the form should not be binding on the applicants.² The Form 470 is utilized early in the E-rate process when applicants are informing the market of their service requirements. In today’s converging marketplace, service providers may offer to fulfill those needs utilizing a variety of service options, which may fit in either the telecommunications services or Internet access services categories. The applicant should be free to evaluate the proposals that it receives from service providers without regard for the service category that it selected on the Form 470. If the FCC needs to collect the service category associated with E-rate funded services for a regulatory purpose, it can still do so using the Form 471. Thus, AT&T agrees with SECA that the FCC

¹ Public Notice, Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program, DA 11-1096 (June 24, 2011) (“Public Notice”).

² See AT&T Comments, Schools and Libraries Universal Service Support Mechanism, WC Docket No. 02-6 (July 9, 2010).

should make clear that service category elections on the Form 470 are not binding on the applicant by editing the introductory language in the ESL.

2. Telecommunications Surcharges and Fees

AT&T agrees with SECA that reviewing surcharges and fees associated with E-rate eligible services has become an administrative burden. However, AT&T believes that SECA's suggestion to approve all surcharges and fees is overly broad, and if left unchecked, could create additional fraud and/or abuse in the program. Instead, AT&T proposes that the Commission create guidelines that service providers and USAC can use along with the existing rule, to determine eligibility for surcharges and fees. For example, surcharges and program fees that service providers are mandated to bill by federal, state or local governments should be eligible. While government mandates are not always described as "taxes," service providers are required to collect for them as if they were taxes.³ In most circumstances, USAC finds that government mandates are eligible for program funding; however, a statement by the Commission would provide clarity to service providers and would prevent disparate treatment by USAC audit staff.

Similarly, surcharges and program fees that service providers are expressly permitted by federal, state or local governments to bill should also be eligible. Service providers are frequently required to contribute to federal, state or local governmental programs. Although, in many cases, the applicable governmental entity does not mandate that the service provider bill program fees to end users, the governmental entity allows service providers the option of passing along their program contributions to its end users, e.g. the federal Universal Service program and applicable fees.⁴ In most cases, the service providers' contributions to these programs is not a

³ For example, the state of Texas created the Emergency Services Fee, which requires local exchange carriers and wireless telecommunications providers to collect a fee from their end users for to support 9-1-1 services in the state. Texas HS Code § 771.071. *See also*, Illinois State Infrastructure Maintenance Fee, 35 ILCS 635/15, 35 ILCS 635/25 (Requiring all telecommunications retailers to charge each customer an additional charge equal to the state infrastructure maintenance fee attributable to that customer's service address).

⁴ 47 CFR § 54.712.

direct input to the services they provide, even though program participation is a requirement to conduct business within the respective governmental jurisdiction. Just as universal service fees are eligible for E-rate funding, other such governmental program fees should also be eligible for E-rate funding because they are likewise incurred by the service providers as a condition of providing services. Since there are no guidelines available for USAC auditors, different auditors often come to different conclusions about the eligibility of these fees and surcharges.

In addition to the Commission providing additional guidance on fees and surcharges, AT&T also suggests that USAC create a process to allow service providers to submit applicable fees and surcharges for review. Such a process will ensure that similar fees and surcharges are treated the same across all service providers and it will make USAC's invoice review process more efficient as the eligibility decision will be pre-determined.

3. Basic Maintenance Contracts for Internal Connections

AT&T agrees with Cisco that additional clarification is necessary regarding the Commission's determination of the eligibility of basic maintenance of internal connections. Based on the comments submitted by Funds for Learning ("FFL"), there appears to be a great deal of information about the role of maintenance contracts for internal connections in this market that should be evaluated by the Commission. Therefore, AT&T supports FFL's proposal for the Commission to create a Notice of Inquiry proceeding to evaluate basic maintenance contracts for internal connections with the goal of collecting additional data on the true maintenance needs of applicants as well as the availability and costs of industry maintenance solutions.

4. Comments of Edline

Edline proposes a number of changes to the draft ESL, which it argues are clarifications to better align the ESL with the FCC's conclusions in the Sixth Report and Order. AT&T has

reviewed Edline's suggestions and finds them confusing and as a result has been unable to ascertain whether their proposed changes are in fact, simply clarifications. Edline has made so many changes and moved so many items around, it is difficult to determine whether their changes are clarifications or would substantively change the Commission's current rules governing the eligibility of web-hosting. If the FCC is considering changing the eligibility of web-hosting, AT&T suggests that it open a proceeding to examine how web-hosting is used by schools and libraries. AT&T also suggests the Commission include on-line collaboration, web-meetings and distance learning applications in any future public notice on web-hosting or other Internet applications.

Respectfully submitted,

AT&T Inc.

By: /s/Terri L. Hoskins

Terri L. Hoskins
Christopher Heimann
Gary L. Phillips
Paul K. Mancini

AT&T Services, Inc.
1120 20th Street NW
Suite 1000
Washington, DC 20036
(202) 457-3047
terri.l.hoskins@att.com

Its Attorneys

July 25, 2011