

September 2, 2011

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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 No. 02-6**  
**FY2012 Eligible Services List**

Dear Ms. Dortch:

On August 31<sup>st</sup>, the Wireline Competition Bureau (the “Bureau”) held a telephonic meeting with Edline that included the following participants: Jon Abrams, Chairman of Edline; Phil Gieseler, a consultant to Edline; Jennifer Richter, counsel to Edline; and Cara Voth, James Bachtell, Alec MacDonnell and Abdel Eqab, all of the Bureau. The parties discussed the following:

**First**, the Bureau staff inquired about what differences in the FY2012 Eligible Services List (“ESL”), from the 2011 ESL, prompted Edline’s suggested changes.<sup>1</sup> Last year, the ESL did not attempt to implement the decisions made by the Commission in the *Sixth Report and Order* regarding web hosting. Instead, the ESL simply referred applicants to the *Order* in order to understand determinations of eligibility with respect to web hosting and content editing.

This year, substantial changes were made to the Internet Access section of the ESL in an attempt to implement the *Sixth Report and Order*. In truth, there is very little in the Internet Access section of the ESL that hasn’t changed.<sup>2</sup> Edline’s overall concern is that last year’s decisions in the *Sixth Report and Order* demonstrated the Commission’s understanding of how e-mail and web hosting technology have converged and have become more similar / functionally equivalent in their ability to facilitate communication, but the 2012 ESL makes unwarranted distinctions between

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<sup>1</sup> Comments of Edline to the FY2012 Draft Eligible Services List for Schools and Libraries Universal Service Program Public Notice, Schools and Libraries Universal Service Support Mechanism, CC Dkt. No. 02-6 (filed on July 18, 2011; Errata filed on July 18, 2011) (“Edline Comments”).

<sup>2</sup> We produced our own deltatview of this year’s ESL versus last year’s ESL in order to ensure a complete understanding of the changes to the Internet Access section. (See Attachment 1 to this letter.)

the services that, *directionally, take the services further apart again*. The ESL also does not implement decisions made in the *Sixth Report and Order*. For example:

- The proposed ESL does not actually implement the decision to make eligible “interactive” activity over a website. In order for interactive activity to occur over a website, two things are needed: (1) a user interface that allows an end user to interact with the website, which includes the ability of the end user to edit (post or change) content and messages on a blog, webpage or e-mail; and (2) integrated software that enables the user interface.<sup>3</sup> Edline has attempted to address both of these integrated components in its edits to the ESL, and will continue to try to suggest helpful language to the Bureau. In order to fully implement the decision to allow websites to become interactive, and not static, it also is important that end users have the ability to interact with all components of web hosting, including the website itself, and all the web hosted communications tools (blogs, discussion boards, etc.). For all the foregoing reasons, it is problematic if the ESL states, broadly, that “content editing” is ineligible, since that is a function in the user interface that enables both e-mail and web hosting. We have a few approaches to address this problem that we will propose to the Bureau in the coming days.
- The ESL also does not make attempts to treat equally e-mail and web hosted communications, which the Commission found to be functionally equivalent in their ability to facilitate communication.<sup>4</sup> If they are functionally equivalent as communication tools, then the components that enable communication over each tool (which components are identical) must be treated equally for purposes of eligibility. Each must have a working user interface which includes the ability to edit (post or change) content. Without a working user interface, e-mail, websites and web hosted communications tools are not interactive and cannot function as the Commission approved in the *Sixth Report and Order*. Here, the problem is, again, that the ESL makes “content editing” ineligible for web hosting, but it is eligible for e-mail. (See Edline’s Ex Parte Notice of its August 19<sup>th</sup> meeting, pages 2-3, for additional differences in how the ESL treats e-mail and web hosting.)
- This year’s ESL also treated e-mail and web hosting differently by placing web hosting in a newly-titled section called “Internet Related Services,” with the

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<sup>3</sup> The *Sixth Report and Order* reversed prior decisions that made interactive activity over web hosting ineligible: “features that facilitate the ability to communicate, such as blogging, e-mailing 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.” *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future, Sixth Report and Order*, 25 FCC Rcd 18762, ¶101 (2010) (“*Sixth Report and Order*”).

<sup>4</sup> *Id.*

justification that web hosting does not provide conduit access to the Internet.<sup>5</sup> However, neither e-mail nor web hosting is closer to the conduit than the other. The difference in placement moves the services further apart instead of recognizing how the technologies have converged.<sup>6</sup>

- Last year, the ESL stated that web hosting may include password protected pages. This year, that language was changed, even though there were no changes in FCC policy regarding password protection.<sup>7</sup> The proposed ESL now suggests that students and parents must have access to password-protected pages. This is against FCC policy from 2009 which explicitly stated that a school or library may restrict access to all or part of its website to certain users, including administrators, teachers, librarians, etc.<sup>8</sup>
- The ESL inserts new language that web hosting service is “for the public or school stakeholders (students and parents)” but leaves out teachers and staff.<sup>9</sup>
- In the improved definition of web hosting, the ESL uses language such as “display content” and “upload files,” but these phrases suggest that web hosting is a static service,<sup>10</sup> and the *Sixth Report and Order* explicitly reversed prior decisions that limited web hosting support to a static website.<sup>11</sup>
- An outdated, nearly 15-year old definition of Internet Access is added to the draft ESL which, if not fully understood, can be incorrectly read to treat e-mail accounts, but not web hosting, as a part of eligible “basic conduit access” to the Internet.<sup>12</sup> Such a definition inserts a competitive bias into the ESL in favor of e-mail that is to the potential detriment of other similarly-situated services that facilitate the ability to communicate.<sup>13</sup>

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<sup>5</sup> Draft ESL at 9 & 11.

<sup>6</sup> Edline Comments at 3-4.

<sup>7</sup> Draft ESL at 11.

<sup>8</sup> See *Schools and Libraries Universal Service Support Mechanism, Report and Order and Further Notice of Proposed Rulemaking*, 25 FCC Rcd 6562, ¶22 (2009).

<sup>9</sup> Draft ESL at 11.

<sup>10</sup> *Id.* and Edline Comments at 7.

<sup>11</sup> *Sixth Report and Order*, ¶101.

<sup>12</sup> Draft ESL at 9.

<sup>13</sup> Edline Comments a 3-6.

Edline advanced a number of changes to the ESL to correct the above problems and others in response to the Bureau's request for public review and comment.<sup>14</sup> Edline also provided detailed explanations of each suggested change.<sup>15</sup> Edline's suggested edits attempt to address problems and inaccuracies directly, rather than leaving interpretation to USAC and the industry. The FCC, USAC and the industry should expect and strive toward more clarity and accuracy in the ESL so that it can function as a correct and helpful tool for all program participants, with minimal external interpretation needed. Engaging in this exercise also affords an easy opportunity to prevent future confusion, misinterpretation, and other problems for USAC and the FCC.

**Second**, the Bureau staff expressed that the ESL needs to exclude "content editing" from eligibility because, without it, schools may seek funding for "fully-loaded" websites that include funding for ineligible content and funding for vendor-provided website design or separate stand-alone software packages that allow schools to design their web pages. Edline offers two responses: (1) Content is not "content editing." Charges for content are clearly stated as ineligible elsewhere in the ESL;<sup>16</sup> and (2) Vendor professional services to design a website or create website content also are ineligible, and this can be easily clarified, if needed.<sup>17</sup> If the ineligibility of these items, and stand-alone software packages, is not clear in the ESL, then perhaps the section on ineligible items should be clarified. However, we don't believe the staff's concern, as expressed during our meeting, is addressed by declaring "content editing" ineligible.

**Third**, staff expressed their sense that the restriction on eligibility for "content editing" in the ESL was not intended to be interpreted as restricting the ability of end users to engage in ongoing interactive activities over their websites, blogs, discussion boards, etc. This is encouraging. Edline is working on new potential solutions to the wording in the ESL in order to ensure that end user eligibility to interact with the website is clear.

The staff asked for examples of instances in which end user content editing capabilities have been challenged by USAC. The confusion over what is meant in the ESL by ineligible "content editing" is the type of thing that has been problematic at the program level in the past and could be easily clarified now. This public comment process for the ESL is the right time to correct the ESL in order to ensure clarity for program participants.

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<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.*

<sup>16</sup> Draft ESL at 11.

<sup>17</sup> The ESL states that "Costs attributable to the creation or modification of information, such as a web site creation fee or content maintenance fees" are ineligible.

**Finally**, the parties discussed the term “content management system” which had arisen in a prior conversation with the Bureau staff. This is a vague term that is subject to many different interpretations and should not be incorporated in the ESL without public notice and comment.

Respectfully submitted,

/s/ Jennifer L. Richter

Jennifer L. Richter  
Counsel to Edline

cc: Gina Spade  
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## **Attachment 1**

Deltaview of What the FCC Proposes to Change  
for the Internet Access Section  
of the Eligible Services List,  
Draft FY2012 Versus FY2011

## Internet Access

### Eligibility Requirements for All Internet Access Services:

~~Internet access is an information service. Briefly, an information service is “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications....” 47 U.S.C. 153(20).~~

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).

Support in this funding category is generally only available for basic conduit access to the Internet ~~or for services that are an integral component part of basic conduit access.~~ ~~Support in this category of service~~ but is not available for content, equipment ~~purchases~~ purchased by applicants, ~~or~~ and services beyond basic conduit access to the Internet. 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.

~~Service providers for Internet access need not be telecommunications carriers.~~

~~We include interconnected VoIP as an eligible service irrespective of whether the FCC has classified this service as a telecommunications service or an information service. The FCC included both information services (*i.e.*, Internet access and voicemail services) and telecommunications services as priority one services eligible for discounts under the universal service support mechanism. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Red 9202, 9212, para. 29 (2003). As such, the regulatory classification of interconnected VoIP service does not affect the inclusion of this service as an eligible service here.~~

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

## ~~Distance Learning and Video Conferencing~~

~~The basic conduit access to the Internet may be used to access Internet-based distance learning and video conferencing services. However, the charges for web meetings or online collaboration solutions for the provision of distance learning or video conferencing charges (e.g. web meetings or online collaboration solutions) are NOT Eligible for discount.~~

~~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 eligible telecommunication carriers, except if provided via fiber or dark fiber.~~

~~Videoconferencing components at customer sites may be eligible as Internal Connections. See the Video Components entry in the Internal Connections section of this Eligible Services List.~~

## ~~E-mail~~ Email Service

~~Internet-based e~~ E-mail service is eligible. ~~Such a~~ 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.

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 ~~e-mail 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. ~~Any cost allocation must be based on tangible information that provides a reasonable and appropriate delineation between the eligible and ineligible components.~~

## Internet Access

Basic conduit access to the Internet is eligible regardless of technology platform.

Access technologies include but are not limited to:

- Broadband over Power Lines (BPL)-enabled Internet access service
- Cable Modem
- Digital Subscriber Line (DSL)
- Fiber optics
- Satellite service
- Telephone dial-up
- T-1 lines
- Wireless

Eligible Internet access may include features typically provided for ~~adequate functionality and performance~~ 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.

Basic conduit access to the Internet may be used to access Internet-based distance learning and video conferencing services.

A wireless Internet access service is eligible under the same provisions as wired access to the Internet.

A Wide Area Network facilities 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.

A wireless Internet access service designed for portable electronic devices is eligible if used for educational purposes and ~~if the~~ off-campus use is removed by cost-allocated 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.

### ~~Other Eligible Internet Access Services~~

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.

### Internet – Related Services

~~• Maintenance and technical support appropriate to maintain reliable operation is eligible for discount when provided as a component of an eligible~~ These services may be purchased separately or as part of a bundled Internet access service:

- 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)
- ~~A web Web hosting service that provides a means for a school or library to display content on the Internet is eligible. The following web hosting functions are eligible: 1) Provision of web site traffic (bandwidth); 2) Provision of disk space for storing 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; 3) Provision of File Transfer Protocol (FTP) transfer or a Web interface to upload files. In addition, web hosting may include password-protected pages, 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 and, webmail, and other features that facilitate real-time interactive communication such as instant messaging and chat. Web hosting does NOT include content created by third-party vendor and any features involving data input or retrieval – including searching of databases for grades, student attendance files, or other reports – and will not include support for the applicants necessary to run online classes or collaborative meetings; instant messaging, and chat, are eligible.~~
- Domain name registration is eligible if it is necessary for the creation of a school or library website ~~is eligible for discount.~~

Please see the Miscellaneous section of this document for additional entries applicable to Internet ~~access~~, such as charges for installation and configuration.

### **Ineligible**

NOT Eligible for E-rate Funding as Internet Access Services  
~~(Not Eligible)~~

The following services are **NOT ELIGIBLE** for discount:

- Services that go beyond basic conduit access to the Internet, such as Virtual Private Network services
- Online Backup Solutions
- Internet content
- Software, services, or systems used to create or edit Internet content or charges for the creation ~~or display~~ of information. Internet access that provides features or content that go beyond basic conduit access to the Internet ~~is not eligible for funding~~. (E-mail service and e-mail account fees, however, are not considered Internet content.) 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, including and applications. Any web hosting features, software applications, end-user file storage, and content editing features ~~other than those specified in FCC 10-175. Web hosting does not include content created by third party vendor and any features involving~~ 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 school or library's hosted website, and discussion boards) and services that may facilitate real-time interactive communication (e.g., instant messaging or chat) when these are included in a web hosting service.
  - Examples of ineligible web hosting features and applications include, but are not limited to: 1) 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; 2) Any features related to school/library administration or school/library operational functions such as the capabilities for data input or retrieval —including (e.g., searching of databases for grades, student attendance files, or other reports —and will not include support for the applicants necessary to run online classes or administrative reports) and 3) Applications or software for collaborative meetings or on-line classes.
    - ~~Charges to access Internet content or limited access information~~
- Charges for distance learning or video conferencing utilities, such as web meetings or online collaboration solutions, even ~~they are if~~ provided via the Internet ~~Software, services, or systems used to create or edit Internet content~~

- Internet2 membership fees
- Training inregarding the use of the Internet
- Costs for training provided via the Internet
  - ~~Services that go beyond basic conduit access to the Internet~~
- ~~Point-to-point connectivity of data, video, or voice applications that are to be provided only by eligible telecommunications carriers, except if~~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).
  - ~~Specialized services that go beyond basic conduit access to the Internet, such as Virtual Private Network services~~
  - ~~Web site creation fee~~
- Electronic library/on-line public access and associated software
- Applications (including GPS) for wireless devices are not eligible for ~~discount~~discounts. Charges for ~~telecommunications service or~~ Internet access service used solely for the provision of these applications are also not eligible.

Separate pricing for the following components when not included in the standard configuration of an Internet access service is **NOT ELIGIBLE**:

- Caching
- Content filtering
  - ~~Firewall service~~
- Web Casting

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.

<b>Legend:</b>	
<u>Insertion</u>	
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<b>Statistics:</b>	
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Insertions	67
Deletions	57
Moved from	10
Moved to	10
Style change	0
Format changed	0
Total changes	144