

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

To: The Commission

REPLY COMMENTS OF BLACKBOARD ENGAGE

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Edline, LLC d/b/a Blackboard Engage (“Blackboard Engage”)¹ offers these reply comments in the above-captioned proceeding,² emphasizing the following: (1) Web hosting is an essential communications service. The critical role played by web hosting in supporting the educational mission of K-12 schools should not be discounted because it is delivered over or “rides over” the Internet; (2) The worst result for schools and service providers would be to move web hosting to Priority 2 status, and this is why: Schools and service providers would retain all the administrative burdens and restrictions inherent in the E-rate program, without assured access to the benefits of E-rate funding for web hosting; (3) If a change regarding web hosting is truly needed, then instead of

¹ Blackboard Inc., the parent company of Blackboard Engage, is a global leader in enterprise technology and innovative solutions that improve the educational experience of millions of families, students and learners around the world every day. While Blackboard Inc. is traditionally seen as a higher education solutions provider, we actually have more clients in the K-12 space. More than half of the U.S. school districts and 75 percent of statewide virtual schools are currently using our products, and we are the leading provider of school websites and parent engagement notification tools. Additionally, one in three U.S. families uses Blackboard products. Our large footprint gives us a unique vantage point to understand the needs and issues of the K-12 community and successfully offer them comprehensive solutions. Our market strategy is driven by the “Active Learner,” or students who have grown up with the Internet and expect to have information readily available at their fingertips. At Blackboard, we are dedicated to helping districts manage the rising technology expectations among Active Learners and their parents, implement a corresponding infrastructure, and provide the appropriate training to help faculty feel comfortable teaching in the digital era. As a subsidiary of Blackboard Inc., and as the leading provider of web hosting solutions, Blackboard Engage is well-positioned to comment on the issues raised in this proceeding.

² *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304 (2013) (“NPRM”).

moving web hosting services to Priority 2 status, the Commission should eliminate E-rate eligibility for web hosting after FY2014-2015. Vendors would then have a year to work with schools to develop creative solutions to the funding loss through product bundling and shared sacrifice, and develop alternate product offerings that take into account a school's reduced ability to pay; and (4) The Commission should take notice that other commenters agree with Blackboard Engage that, to the extent web hosting is still eligible for E-rate funding, the Commission must take steps to curb abuses by web hosting providers and ensure that E-rate dollars for web hosting are only spent on eligible services. Commenters also agree with Blackboard Engage that the Commission should encourage bundled purchasing for E-rate services in order to allow schools to obtain lower prices and better value.

I. WEB HOSTING IS AN ESSENTIAL COMMUNICATION SERVICE.

In its initial comments, the State E-Rate Coordinators' Alliance ("SECA") argues that web hosting and email services³ are "ride-over" services: "Email service and webhosting services are used by many applicants, and may help facilitate 21st Century learning, but these services are supplemental 'ride-over' services...."⁴ SECA discounts the vital roles played by web hosting and email because these services are delivered over the Internet.

The critical function played by web hosting and email services in the educational mission should not be discounted because of the technical delivery method. As Blackboard Engage made clear in its initial comments to the NPRM,⁵ E-rate eligible web hosting services provide an essential means for students, teachers, parents and administrators to share important information, as a

³ SECA, citing the Sixth Report and Order, argues that email and web hosting services are analogous and treatment of the two services should be parallel. *See* Comments of the State E-Rate Coordinators' Alliance, WC Docket No. 13-184 (filed Sept. 16, 2013) ("SECA Comments") at 22. We agree with SECA's assertion for the purposes of our analysis herein.

⁴ *See* SECA Comments at 22.

⁵ *See* Comments of Blackboard Engage, WC Docket No. 13-184 (filed Sept. 16, 2013) ("Blackboard Engage Comments") at 1-2, 32.

community, about the entire educational experience, including the school, the classroom, school events, student performance and school initiatives in a manner that improves educational outcomes.⁶ Web hosting is used, in part, as a gateway for modern educational technology that enables teachers to utilize cutting edge learning and communications systems in the classroom and throughout the school. The importance of web hosting to achieving improved educational outcomes is well documented, widely accepted, and not credibly in dispute. This value is not diminished because it is delivered over or “rides over” the Internet.

II. MOVING WEB HOSTING AND EMAIL SERVICES TO PRIORITY 2 WOULD NOT BE FAIR TO APPLICANTS.

Following on its reasoning that web hosting and email are “ride-over” services, SECA argues these services merely help disseminate information, and as such should be reclassified as Priority 2. According to SECA, making web hosting and email Priority 2 services, and capping funding at 50%, is administratively fairer to applicants because applicants can choose which “information dissemination” services and equipment best meet their needs:

.... the existing Eligible Services List contains many components that help disseminate information to classrooms and libraries but none are essential for delivering or transmitting broadband service.

All of these other services and equipment – including email, webhosting, telecommunications service exclusively used for voice communications and all internal connections other than wireless access points and controllers and routers – should be reclassified as Priority 2. Rather than making all or some of these other

⁶ In 2010, the Commission reached tentative conclusions in the Further Notice of Proposed Rulemaking (“FNPRM”) released with the *FY2010 ESL Report and Order* that web hosting either should not be eligible for funding under the E-rate program, or, alternatively, should only be eligible for E-rate program funds as a Priority 2 service. Blackboard Engage commented extensively on the value of web hosting in response to the FNPRM. *See* Comments of Edline and ePals, CC Docket No. 02-6, GN Docket No. 09-51 (filed July 9, 2010). During that proceeding, hundreds of schools weighed in about the importance of continuing the availability of web hosting for purposes of meeting educational requirements and budgets. A number of educators also commented that in economically difficult times, school districts must maximize diminishing funds, and web hosted communications services offer superior functionality and cost savings. *See* Reply Comments of Edline and ePals, CC Docket No. 02-6, GN Docket No. 09-51, at 8 and Appendix A (filed July 26, 2010). In the interest of brevity, we are not re-stating these arguments, but we encourage reference to the filings in the 2010 proceeding.

services and components ineligible or phasing out some services but retaining the eligibility of other services, it is administratively more efficient and is fairer to applicants to allow all of these services and components to continue to be eligible.⁷

As noted above, we disagree with SECA's assertion that web hosting and email services are of lesser value simply because of their delivery method. But SECA's fairness argument has two deeper flaws. First, inherent in SECA's fairness argument is the assumption that funds will be available for Priority 2 services at all. Based on the growth of Priority 1 funding demands in recent years, a far more likely result is that funding for Priority 2 services will be limited to applicants who currently qualify for 90% funding eligibility, or will be consumed entirely by Priority 1 funding requests and therefore unavailable. The FY2013 funding cap is \$2.38 billion, while the USAC FY2013 Demand Estimate projects Priority 1 demand for 2013 at over \$2.7 billion, easily consuming the entire available budget.

Second, the administration of Priority 2 funding is designed to support the purchase of tangible items. Many Priority 2 applicants await USAC's funding decision for the applicable year, and then issue a purchase order for the applicable goods they intend to purchase (if funds are available). Even the Priority 2 funding forms are designed to support tangible delivery of goods. Web hosting and email, on the other hand, are essentially subscription services that must be provided throughout the year. Applicants cannot await funding decisions at year end to decide whether to purchase the services.

The actual result of moving web hosting to Priority 2 – rather than fairness and choice of services for applicants (as SECA suggests) – would be continued imposition of the administrative

⁷ SECA Comments at 23.

burdens and restrictions of the E-rate program, without assured access to the financial benefits of the program.⁸

III. IF FORCED TO CHOOSE BETWEEN PRIORITY 2 STATUS AND ELIMINATING ELIGIBILITY FOR WEB HOSTING, APPLICANTS AND SERVICE PROVIDERS ARE BETTER OFF IF ELIGIBILITY IS ELIMINATED.

If the Commission adopts SECA's proposal of moving web hosting and email services to Priority 2 at a 50% funding level, the result will be terrible for schools and libraries, decreasing the schools' and libraries' ability to purchase web hosting (potentially receiving no funding at all) after an arduous application process fraught with program inefficiencies. What is more, providers would continue to be severely restricted in their ability to bundle, offer creative pricing options across products, or offer free services to maximize value.

If the Commission is forced to make a decision about web hosting, then instead of moving web hosting and email services to Priority 2, the better result is to eliminate funding altogether and set a clear termination date of 2015 after close of the FY2014-2015 funding year.⁹ Presumably the Commission will announce its E-rate modernization decisions in 2014. If funding for web hosting is to be eliminated, then schools, libraries, and vendors will have an entire funding year to make plans. Blackboard Engage and other vendors would have a year to work with schools to develop creative solutions to the funding loss through product bundling and shared sacrifice, and alternative product offerings that take into account the schools' and libraries' reduced ability to pay. Other commenters agree with this approach. E-Rate Central, for example, emphasizes that “[m]ulti-year phase-outs of eligible services add complexities to the application process and should be avoided. The alternative

⁸ SECA argues that “continuing to make these services eligible for E-rate, applicants will still be required to competitively bid these services, which will ensure that the non-discount amount that the applicants must pay from their own budgets is as cost effective as possible.” SECA Comments at 23. Of course, applicants are free to seek competitive bids outside the E-rate program, rendering any suggested benefit from the E-rate competitive bidding process somewhat circular.

⁹ See Blackboard Engage Comments at 32.

of lowering discounts or funding priorities should likewise be avoided. Pre-announcing target dates for the withdrawal of support provides a simpler way for applicants to plan.”¹⁰

The Commission should not adopt SECA’s proposal to move web hosting to Priority 2 at a 50% funding level because reduced funding (or the risk of no funding at all) through Priority 2, coupled with an application process designed for tangible goods, the deficiencies of the program as applied to web hosting and email, and the shackles of the current bundling restrictions and prohibitions on gifting and free services, would severely impede the creative development of product solutions to meet school needs. If a choice regarding funding for web hosting must be made, then instead of a move to Priority 2 status as SECA suggests, the better decision for schools and service providers would be for the Commission to eliminate E-rate funding for web hosting after the FY2014-2015 funding year.

IV. COMMENTERS SUPPORT BLACKBOARD ENGAGE’S VIEWS ON THE NEED TO CONTROL ABUSES BY WEB HOSTING PROVIDERS, AND THE NEED TO ENCOURAGE BUNDLED PURCHASING.

As Blackboard Engage noted in its initial comments, there are a number of fundamental deficiencies in the E-rate program related to web hosting, including: (a) a lack of transparency in the program documentation, vendor eligibility determinations, and the Form 474 review process; (b) inconsistent vendor eligibility determinations and abuse of the “ancillary rule” and the “cost allocation” process resulting in an uneven playing field between vendors; (c) vendor abuse of the gap between the beginning of the funding year and the final ESL release to engage in nefarious contracting practices; and (d) ambiguous application of the lowest corresponding price rule.¹¹

¹⁰ Comments of E-Rate Central, WC Docket No. 13-184, at 5 (filed Sept. 16, 2013) (“E-Rate Central Comments”); *see also* Comments of Sprint Corporation, WC Docket No. 13-184, at 17 (filed Sept. 16, 2013) (“Should the Commission decide to reduce support for certain services (other than those that are found to be obsolete), it should provide reasonable advance notice to applicants and service providers to avoid sticker shock.”).

¹¹ *See* Blackboard Engage Comments at 4-16, 24-28.

For these reasons, Blackboard Engage urged the Commission in its initial comments to take steps to curb abuses by web hosting providers and ensure that E-rate dollars for web hosting are only spent on eligible services.¹² Specifically, Blackboard Engage urged the Commission to (i) no longer allow web hosting providers to bundle ineligible features with eligible web hosting for one combined price; (ii) eliminate the cost allocation procedure for web hosting; and (iii) abolish application of the “ancillary” rule for web hosting services.¹³

Other commenters agree with Blackboard Engage that the Commission must take steps, to the extent funding for web hosting is preserved, to control abuses by web hosting providers.¹⁴ The School District of Philadelphia, for example, explains that “[m]any service providers that are receiving E-rate funding for e-mail or web hosting, offer blended solutions to the extent that cost allocation has become hypothetical at best, and in many cases badly abused.”¹⁵ E-Rate Central also agrees that “[w]eb hosting pricing has indeed become skewed” and emphasizes that, if not made ineligible, “cost allocation procedures need to be significantly revised.”¹⁶ Further, Hewlett-Packard agrees with Blackboard Engage, urging the Commission to “tighten the definitions of email and web hosting services to assure that funding is going explicitly to eligible services”¹⁷ The Commission must take notice of the substantial concern about web hosting abuses that are taking place.

¹² See Blackboard Engage Comments at 9-16.

¹³ See Blackboard Engage Comments at 9-10.

¹⁴ See, e.g., Comments of the School District of Philadelphia, WC Docket No. 13-184, at 6-7 (filed Sept. 16, 2013) (“School District of Philadelphia Comments”); E-Rate Central Comments at 5; Comments of Hewlett-Packard, WC Docket No. 13-184, at 15 (filed Sept. 16, 2013) (“Hewlett-Packard Comments”); Comments of Richmond County School System, Augusta, Georgia, WC Docket No. 13-184, at 3 (filed Sept. 16, 2013) (“We agree that email and web hosting services have been gerrymandered to decrease the cost of otherwise ineligible components.”); Comments of Riverside Unified School District Technology Department, WC Docket No. 13-184, at 8 (filed Sept. 16, 2013) (“Vendors are creating ways that they can increase their profit margin at the cost of E-rate applicants. Web Hosting vendors have and will continue to do so if not controlled”).

¹⁵ School District of Philadelphia Comments at 6-7.

¹⁶ E-Rate Central Comments at 5.

¹⁷ Hewlett-Packard Comments at 15.

Blackboard Engage urges the Commission to seriously consider the solutions Blackboard Engage has proposed.

Commenters also agree with Blackboard Engage that the Commission should encourage E-rate applicants and service providers to leverage bundled purchasing to obtain lower prices and better value for schools.¹⁸ As Windstream Corporation emphasizes, “though it may make sense to eliminate support for certain services and components of voice services, the Commission should not make it more difficult for providers to offer, and for customers to use E-Rate funding to pay for, bundles that often are more simple and cost effective.”¹⁹ Current bundling restrictions on eligible and ineligible products, coupled with the present gifting restrictions and prohibitions on providing free services, stymie market efficiencies that otherwise could create additional value for schools.²⁰

V. CONCLUSION.

Web hosting plays a critical role in supporting the educational mission of K-12 schools, and that role should not be discounted because web hosting is delivered over or “rides over” the Internet. The worst result with respect to web hosting in this proceeding would be to move web hosting to Priority 2 status, and this is why: Schools and service providers would retain all the administrative burdens and restrictions inherent in the E-rate program, without assured access to the benefits of E-rate funding for web hosting. Instead, if a change regarding web hosting is truly needed, then the Commission should eliminate E-rate eligibility for web hosting after FY2014-2015. Vendors would then have a year to work with schools to develop creative solutions to the funding loss through product bundling and shared sacrifice.

¹⁸ See Blackboard Engage Comments at 16.

¹⁹ Comments of Windstream Corporation, WC Docket No. 13-184, at 6 (filed Sept. 16, 2013).

²⁰ See Blackboard Engage Comments at 16-20.

Other commenters, both schools and service providers, agree with Blackboard Engage that, to the extent E-rate eligibility for web hosting remains, the Commission must take steps to curb abuses by web hosting providers and ensure that E-rate dollars for web hosting are only spent on eligible services. Blackboard Engage suggested many solutions in its initial comments to curb abuses, improve cost-effectiveness and improve transparency, including:

- (1) make every aspect of the E-rate application process – as well as related documents – available to the public online, including RFPs, responses, contracts, pricing, discount information, eligibility determinations, cost allocation details, etc;
- (2) prohibit web hosting companies from bundling eligible and ineligible features for one combined price;
- (3) eliminate cost allocation procedures for web hosting which serve as a *de facto* and opaque pricing mechanism;
- (4) abolish application of the “ancillary” rule for web hosting services;
- (5) adopt alternate benefit allocation methods that can be used when bundling is offered;
- (6) allow E-rate applicants to receive free goods and services that are available in the marketplace on a widespread basis;
- (7) establish a voluntary E-rate pre-certification program to determine eligibility for E-rate products and services;
- (8) tie release and use of the of the Form 470 for a funding year with release of the finalized ESL for that year in order to eliminate uncertainty and mitigate against vendors gaming the system; and
- (9) clarify application of the “lowest corresponding price” rule.

To the extent eligibility for web hosting is preserved, Blackboard Engage believes that these improvements will benefit all stakeholders and will result in more cost-efficient use of E-rate funds for eligible services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benjamin C. Bartlett, certify on this 8th day of November 2013, a copy of the foregoing Reply Comments has been served via electronic mail or first class mail, postage pre-paid, to the following:

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