

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	GN Docket No. 09-51
	)	WC Docket 13-184
	)	

**Comments of Buonassissi, Henning & Lash, P.C. Regarding The  
Wireline Competition Bureau’s Request for Comments  
On Its Draft Eligible Services List For  
Schools And Libraries Universal Service Program**

Buonassissi, Henning & Lash, P.C. (“BHL”), hereby submits its comments response to the request for public comment by the Wireline Competition Bureau of the Federal Communications Commission (“WCB”) in the above referenced proceeding. The Wireline Competition Bureau (“Bureau”) seeks comment on a draft eligible services list (“ESL”) for the schools and libraries universal support mechanism (also known as the E-rate program) for funding year 2015. The WCB suggests that Commenters should highlight whether the draft manifests the Commission’s decisions and intent in the *E-rate Modernization Order*,<sup>1</sup> and to the extent that they find additional changes are necessary, we encourage Commenters to be as detailed as possible with their recommendations.

As a long time advocate of noncommercial educational licensees and low-power television licensees BHL believes that it is critical that the FCC clarify its definition of wireless carriers in this proceeding.

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<sup>1</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, FCC 14-99, (rel. Jul. 23, 2014) (“E-rate Modernization Order”).

BHL fully supports the FCC's efforts to modernize the E-rate rules. As the FCC has noted the E-rate rules were established nearly two decades ago. The E-rate program was authorized by Congress as part of the Telecommunications Act of 1996 (the Telecommunications Act), and created by the Commission in 1997 to, among other things, enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary schools and libraries.<sup>2</sup>

NHL also supports the three goals. The Order adopts three goals for the E-rate program: (1) ensuring affordable access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries, (2) maximizing the cost-effectiveness of spending for E-rate supported purchases, and (3) making the E-rate application process and other E-rate processes fast, simple, and efficient.

With respect to the first goal, prior to the E-rate Modernization Order there were five categories of services for which E-rate funding is available to eligible schools, libraries and consortia: telecommunications, telecommunications services, Internet access, internal connections, and basic maintenance of internal connections.<sup>3</sup> Within those five broad categories, the Commission has specified services and products including, but not limited to, voice services, Internet access services, and digital transmission services, that are eligible for E-rate support.

In the E-rate Modernization Order the FCC simplified matters and restructured the E-rate into category one and category two services. Services needed to support connectivity to schools and libraries were designated "category one" services. Those

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<sup>2</sup> See 47 U.S.C. § 254(h)(2)(A).

<sup>3</sup> See generally 47 C.F.R. §§ 54.501 *et seq.*

broadband internal connections components and services needed to enable high-speed broadband connectivity were designated "category two" services.

### **I. The FCC Must Clarify the ESL Definition of Wireless Services**

BHL supports the Commission's restructuring of the ESL into category one and category two services. However the FCC must clarify the definition of "wireless services" to match the evolving nature of broadband services. In support whereof the following is submitted:

The ESL Public Notice establishes category one services as follows:

#### **Category One**

Category One includes the telecommunications services, telecommunications, and Internet access services for which E-rate applicants may seek discounts. This category consists of the services that provide broadband to eligible locations including data links that connect multiple points, services used to connect eligible locations to the Internet, and services that provide basic conduit access to the Internet. Maintenance and technical support appropriate to maintain reliable operation are eligible for support when provided as a component of these services.

#### **Eligible Data transmission services and Internet access**

- Asynchronous Transfer Mode (ATM)
- Broadband over Power Lines
- Cable Modem
- Digital Subscriber Line (DSL)
- DS-1, DS-2, and DS-3
- Ethernet
- Fiber (Lit and Dark)
- Frame Relay
- Integrated Services Digital Network
- OC-1, OC-3, OC-12, OC-n
- Satellite Service
- Switched Multimegabit Data Service
- Telephone dial-up
- T-1, T-3, Fractional T-1
- Wireless services (e.g., microwave)

-Wireless Internet access and mobile hotspot service plans for portable devices are eligible if used for educational purposes and cost effective as required in FCC 14-99. Off-campus use, even if used for an educational purpose, is ineligible for support and must be cost allocated out of any funding request.

The Commission's offering of a definition of wireless services to encompass nothing more than "e.g., microwave" is woefully inadequate, particularly in light of current guidelines as compared to advances in the technical ability to deliver broadband services by broadcast stations.

In Appendix F, paras. 14-15 of the E-rate Modernization Order, the FCC, citing the U.S. Census Bureau, 2007 NAICS Definitions, defines wireless services thusly:

**Category:**

**Wireless telecommunications carriers (except satellite)**

**Description:**

This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.

*Cross-References.* Establishments primarily engaged in--  
Operating and maintaining wired telecommunications networks--are classified in Industry 517110, Wired Telecommunications Carriers;  
Operating and maintaining satellite networks--are classified in Industry 517410, Satellite Telecommunications;  
Providing satellite television distribution services--are classified in Industry 517110, Wired Telecommunications Carriers; and  
Operating as mobile virtual network operations (MVNO)--are classified in U.S. Industry 517911, Telecommunications Resellers.

U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)",  
<http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

Wireless telephony is defined as cellular, personal communications services, and specialized mobile radio telephony carriers. *Id.*

These categories clearly do not include broadcast stations. The U.S. Census Bureau, 2007 NAICS Definitions, have an entirely separate definition of that type of communications system, as follows:

**515120 Television Broadcasting**

This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources.

See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=515120&search=2007%20NAICS%20Search>

**II. Specifically The FCC Must Clarify the ESL Definition of Wireless Services To Include Broadcast Stations, Including Low Power Television Broadcast Stations**

The FCC's ESL definition of "wireless services" must include broadcast stations, including but not limited to all low power television broadcast stations, whether designated Class A or not. This is critical, as the LPTV industry moves to broaden its service to include the ability to offer broadband services. LPTV stations have long had the ability to offer broadband services, based on the authority established in the LPTV Pilot Project Digital Data Services Act (DDSA). The DDSA mandates that the Commission issue regulations establishing a pilot project pursuant to which specified Low Power Television (LPTV) licensees or permittees can provide digital data services to demonstrate the feasibility of using low-power television stations to provide high-

speed wireless digital data service, including Internet access, to un-served areas. See U.S.C. § 336 (h). As defined by the DDSA, digital data service includes: (1) digitally-based interactive broadcast service; and (2) wireless Internet access. See U.S.C. § 336 (h) (7).

More recently, the LPTV Spectrum Rights Coalition has proposed its new “Smart LPTV Initiative”, which is a coordinated approach to enabling LPTV with a flexible use future operating system. The Coalition has met with the wireless internet service providers and their trade association WISPA, the rural Telcos and their Rural Broadband Alliance, with the Corporation for Public Broadcasting, Association of Public TV Stations, and the Public Broadcasting System. The Coalition describes various Smart LPTV Initiative components as follows:

**-Smart LPTV is a way that licensees can use TV White Space (TVWS) technologies to offer fixed broadband services within the LPTV 6-MHz spectrum to local communities.** The Coalition recently received an internal opinion from the Video Division of the Media Bureau that since LPTV have no minimal operating requirements that as long as a built and licensed LPTV transmission plant is built, provides a non-interfering signal to its contour limits, and does not go dark for longer than 10 days, it may deploy a TVWS system within its licensed spectrum assignment and noise-limited contour, to its’ own customers. Further analysis has shown that LPTV may not have to even coordinate with TVWS database administrators if the LPTV TVWS customers use equipment which only operates within the LPTV’s licensed 6-MHz. The LPTV industry has over 2500 new construction permits from the 2009 rural

filing window, of which most were anticipating that they would be able to deploy various flexible use transmission systems in support of the National Broadband Plan.

The Smart LPTV Initiative can quickly deploy TVWS fixed broadband into communities which need it quickly and cost-effectively. The Coalition has developed its Initiative so that the WISPs, rural Telco's, and local communities themselves can either lease LPTV channel capacity, or can purchase their spectrum on a lease/purchase basis. The Coalition also presented the Smart LPTV Initiative to the Super Wifi event in Las Vegas.

**-The Coalition is preparing an LPTV experimental license program which includes:**

1. The use of TVWS technologies within the LPTV spectrum
2. A digital channel-6 transmission system with an 87.7 FM signal
3. A Single-Frequency Network testing
4. An increased power testing
5. Field tests for new ATSC 2.0 technologies and services

As can be seen from both long-standing statutory authority and current developments by LPTV licensees, it is critical that the FCC clarify that the definition of "wireless services" includes the delivery of broadband services by broadcast stations, and specifically LPTV stations. The FCC states in the ELS Public Notice that "Finally, the proposed ESL eliminates the ESL Glossary. Instead, we propose that USAC post a glossary of terms on its website as a reference tool. This glossary on USAC's website would not be part of the ESL

and would not be used to determine eligibility for E-rate discounts. Applicants and service providers would be free to refer to it, but just for informal guidance.” So the new USAC Glossary will provide no assistance in determining the definition of “Wireless Services”. The FCC must actively do so itself in no uncertain terms.

### **III. Conclusion**

The foregoing premises considered, Buonassissi, Henning & Lash, P.C. respectfully requests the Commission incorporate its comments into rules adopted in this proceeding.

Respectfully Submitted,

*/s/ Robert E. Kelly*

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Robert E. Kelly  
Buonassissi, Henning & Lash, P.C.  
1861 Wiehle Avenue, Suite 300  
Reston, Virginia 20190

Ramsey R. Saleeby  
Buonassissi, Henning & Lash, P.C.  
1861 Wiehle Avenue, Suite 300  
Reston, Virginia 20190  
703-796-1341