

**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)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Public Notice: Wireline Competition)	DA 14-1130
Bureau Seeks Comment on Draft Eligible)	
Services List for Schools and Libraries)	
Universal Service Program)	

**REPLY COMMENTS OF
TELEPAK NETWORKS, INC. and CELLULAR SOUTH, INC.**

Telepak Networks, Inc. and Cellular South, Inc. (“C Spire”) submit these reply comments in response to the Wireline Competition Bureau’s (“Bureau”) Public Notice (“PN”) requesting comment on the draft Funding Year (“FY”) 2015 Eligible Services List (“ESL”) for E-rate.¹ The 2015 ESL will implement major E-rate changes adopted by the Commission in July. The *Draft ESL* reflects a welcome simplification of what had become a lengthy and onerous document. C Spire did not file initial comments but responds to the following specific issues raised by commenters:

¹ *Wireline Competition Bureau Seeks Comment On Draft Eligible Services List For Schools And Libraries Universal Service Program*, Public Notice, WC Docket No. 13-184, CC Docket No. 02-6, GN Docket 09-51, DA 14-1130 (Aug. 4, 2014) (“Draft ESL” and “ESL PN”, respectively); see *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. Jul. 23, 2014) (“Modernization Order”).

1. The Bureau should clarify that data transmission services supporting integrated service offerings which include voice or video are 100% eligible for support. For example, there should be no requirement to cost allocate a data circuit based on percent utilization by a VOIP application.
2. When used for educational purposes, mobile wireless data devices should remain classified as eligible Category One data transmission and Internet access services.
3. The Bureau should not include language in the ESL warning applicants away from multi-year service agreements specifically for Category Two services. (If anything the Bureau should note the Commission's intent to provide Category Two funding beyond the \$2 billion allocated through the end of FY 2016.²)

I. THE BUREAU SHOULD CLARIFY THAT THE ELGIBILITY OF DATA TRANSMISSION SERVICES IS NOT DEPENDENT ON THE TYPE OF DATA BEING TRANSMITTED

Several commenters requested the Bureau clarify that data circuits that may carry data associated with services such as voice or video should nonetheless be considered 100% eligible. These commenters argue that cost allocation is either not warranted, or would be unnecessarily burdensome. C Spire agrees and supports these comments.

Mitel argued that the phase down of E-rate support for voice should not impact “integrated or bundled services.”³ Mitel explained:

[F]or . . . integrated or bundled services [it will] be difficult for applicants and service providers alike to determine how much of the service price should be attributed to “voice” and how to bill and

² See *Modernization Order*, ¶ 118 (setting a \$5 billion five-year budget for Category Two); see also *id.* at ¶ 76, n.162 (recognizing possibility of budgeting more than \$1 billion per year for Category Two services if warranted); *id.* at ¶ 78 (noting ongoing consideration of raising current overall E-rate funding cap).

³ Mitel NetSolutions, LLC (“Mitel”) comments at 5.

reimburse the “voice” component at a different E-rate discount percentage from the “broadband” component. . . . The burden of attempting to cost allocate . . . features [from a seamlessly integrated bundle] into constituent parts is likely to exceed any savings to the E-rate program during the voice phase-down period. . . . Mitel recommends that such inseverable bundled service offerings fall within the eligible data transmission and Internet access services instead of requiring applicants and service providers to engage in difficult – and ultimately arbitrary – cost allocations.⁴

The State E-rate Coordinators Association (“SECA”) expressed similar concerns, suggesting the Commission’s voice phase-out was aimed at voice applications and services, not the connectivity that enables these services:

1. The Public Notice indicates that the telecommunications component of distance learning/video conferencing services is eligible; this clarification needs to be carried forward into the ESL.
2. Various voice services, including VoIP, are typically carried over digital transmission circuits such as PRI’s, Frame Relay, T-1s, T-3s, or native IP such as MPLS/Ethernet. The ESL should clarify whether the underlying circuit charges are fully eligible when not fully dedicated to voice services, or whether voice service utilization must be quantified and separately allocated as a part of the phase down of voice service support. SECA believes that it is the FCC’s intent to promote, without penalty, the shared use of broadband for numerous applications — including voice services.
3. Similarly, the draft ESL indicates that telephone dial-up is an eligible data transmission service but that plain old telephone service (“POTS”) is eligible only as a voice service. Presumably, this means that a telephone dial-up line is fully eligible for data usage, but not for voice. It is not clear whether eligible data usage includes only dial-up Internet service, or includes other data applications such as fax or alarm circuits.⁵

Another commenter suggested that dedicated voice circuits (such as ISDN PRI and SIP trunking) should be subject to the voice phase down, but not data circuits where less than 25% of the bandwidth is taken up by voice traffic.⁶

The *ESL PN* itself restates the established rule that the transmission component of otherwise ineligible services – such as certain components of video conferencing – is eligible for

⁴ *Id.* at 6.

⁵ SECA comments at 4. .

⁶ *See* E-rate Management Professionals Association (“E-mpa”) comments at 7.

E-rate support.⁷ While removing language that restates this rule and that has long been in the ESL, the Bureau explained that the rule itself was not being changed.⁸ With voice being phased down, the same rule which applies to ineligible components of video services, should apply also to voice: that the telecommunications component for the service remains eligible. As SECA observes, this is also consistent with the *Draft ESL* in which a phone line used for dial-up Internet access is an eligible data transmission service, while a POTS line is not.⁹ The Bureau should confirm this same principle applies to broadband data circuits.

C Spire also agrees that if the Bureau were to embrace a different interpretation, any benefit would be greatly offset by the significant costs that would be imposed. Cost allocations of this nature are burdensome, will delay the processing of applications by USAC, and will be full of inconsistency. Data is data – as long the data on an eligible broadband circuit has an educational purpose, there is no reason to treat it differently depending on whether it is voice, video, a website, or an application (or a combination thereof).¹⁰

II. MOBILE WIRELESS DATA ACCESS USED FOR EDUCATIONAL PURPOSES SHOULD CONTINUE TO BE CLASSIFIED AS A CATEGORY ONE SERVICE

The Commission in the *Modernization Order* expressly continued funding for individual data plans in situations where access to a wireless local area network (“WLAN”) was

⁷ See *ESL PN* at 3-4 (“The explanation, for example, that the telecommunications component of a distance learning capability, video, interactive television, and video conferencing is eligible may be helpful to applicants because it notifies them that they may use broadband telecommunications for these purposes . . .”).

⁸ *Id.* at 4 (“We remove this and similar explanations from the ESL because we find them to be unnecessary and potentially misleading for applicants.”).

⁹ SECA comments at 4; *Draft ESL* at 2.

¹⁰ Note that if voice-only circuits are ineligible, but the data circuits carrying voice data are fully eligible, it may provide an incentive for school district to migrate to VOIP solutions which, in turn, will deliver significant cost savings to schools over the medium and long term. See *Mitel* comments at 2 (“Once the migration occurs, VoIP is far less expensive than traditional phone service. Indeed, the Bureau has found that VoIP service on average costs less than half what traditional phone service costs.”) (citation omitted).

impractical.¹¹ Examples of where this might be necessary are a bookmobile that travels from neighborhood to neighborhood, or school field trips where tablet computers are used as interactive guides. Mobile wireless access is intended to provide Internet access where a WLAN cannot; however, such devices cannot be said to provide internal connections. Indeed, they do not connect at all to other libraries or classrooms (except by way of the public Internet). Rather, they represent individual “basic conduit connections to the Internet.”¹²

Notwithstanding, several commenters suggest the Bureau consider categorizing such mobile wireless data connections as Category Two services.¹³ Aside from the fact that such connections don’t fit the definition of Category Two – and aside from the potential procedural concerns of the Bureau acting beyond its authorization – there are significant practical concerns to such a reclassification. Notably, if mobile wireless data plans were Category Two, they would count toward the per-student budgets of schools and square-footage budgets of libraries. This is potentially very complex. For example, for schools, students can be double-counted for budgetary purposes if a student uses more than one instructional facility, *e.g.*, if a student spends part of her day at a vocational training school one day per week. The objective is to assure that student has adequate connectivity at both facilities. Counting a mobile wireless data plan used on a field trip against that student’s budget, however, would have the opposite effect: it would reduce available funding for that student at each physical location where she receives instruction. Bookmobiles would present a similar dilemma, potentially introducing the issue of counting the

¹¹ See *Modernization Order*, ¶ 153 (“[W]e will allow applicants to seek funding for individual data plans where the applicant is able to demonstrate that individual data plans are the most cost-effective option for providing internal broadband access for mobile devices.”).

¹² See *Draft ESL* at 2 (description of eligible Category One services).

¹³ See SECA comments at 3; see also E-mpa comments at 7 (asserting *Draft ESL* is ambiguous regarding the appropriate classification).

square footage of the bookmobile in calculating a library's Category Two budget – something the Commission surely did not intend.

III. THE ESL SHOULD NOT WARN APPLICANTS AGAINST ENTERING INTO MULTI-YEAR CONTRACTS FOR CATEGORY TWO SERVICES

The Commission took a bold and important step in eliminating its rigid system which prioritized E-rate funding for connections *to* schools and libraries ahead of E-rate funding for connections *within* schools and libraries. In recent funding years this system has meant little to no E-rate support for internal connections. In response, the Commission for the first time recognized the fundamental and *essential* importance of funding for internal connections, and took initial concrete steps to assure adequate and predictable funding each and every funding year. These steps included lowering the maximum discount for internal connections, eliminating the strict “priority” system, and establishing annual and multi-year budgets for both the program and for each school or library for such funding. C Spire strongly supports these efforts and believes they will accomplish the Commission's goal of assuring predictable levels of funding for internal connections in future years.

Nevertheless, one commenter suggests the Bureau take the unprecedented step of explicitly warning applicants not to enter into multi-year agreements with vendors for Category Two services due to future uncertainties in program funding.¹⁴ C Spire believes that such a step is not only unnecessary but would undermine the Commission's goals. The initial reforms from this summer *reduced* uncertainty regarding the availability of funds for internal connections. If anything, the Bureau should do the opposite of what this commenter has proposed and re-state

¹⁴ See SECA comments at 3 (“[T]he ESL should . . . warn applicants considering multi-year contracts for [certain] Category 2 services that discounts for such services will not be available beyond FY 2016 unless the Commission takes specific action to make them so.”).

the Commission's stated intent to take further actions in the near term that will continue the reforms adopted this summer.¹⁵

Note the Draft ESL already states that "Support for components and services in [Category Two] are subject to the funding, budgetary, and other requirements and limitations set forth in the E-rate Modernization Order (FCC 14-99) and the Commission's rules." No further statements of caution are needed. Moreover, the funding uncertainty associated with multi-year service contracts have been a feature of E-rate ever since the cap was first hit.¹⁶ This includes the inherent uncertainty associated with a program that allows multi-year contracts but only commits funding in one-year increments. To address this uncertainty, C Spire had urged the Commission to allow E-rate to make funding commitments that would span more than one funding year and thus expressly support – rather than simply allow – multi-year contracts.¹⁷ Although the Commission did not take this step, we believe this will ultimately be the best way to reduce funding uncertainty for schools and libraries.

IV. CONCLUSION

We appreciate the opportunity to comment on the *Draft ESL* and support the Bureau's effort to streamline and simplify the annual ESL format. We also urge the Bureau to: (1) clarify that cost allocation is not required for data connections that transmit data associated with voice services; (2) not reclassify mobile wireless data plans as Category Two services; and (3) not

¹⁵ See *Modernization Order*, ¶ 118 (setting a \$5 billion five-year budget for Category Two); see also *id.* at ¶ 76, n.162 (recognizing possibility of budgeting more than \$1 billion per year for Category Two services if warranted); *id.* at ¶ 78 (noting ongoing consideration of raising current overall E-rate funding cap).

¹⁶ See, e.g., *Modernization Order*, ¶ 154 (declining to grandfather multi-year contracts that include services that are ineligible under the new rules, stating: "the Commission has never adopted a rule insulating applicants and service providers from changes in program rules simply because a multi-year contract was utilized.")

¹⁷ See C Spire (Telepak Networks) April 2014 Modernization Order focused comments at 7 ("Commission should allow multi-year funding commitments for such [managed LAN] services (similar to the Healthcare Connect Fund)"); see also C Spire (Telepak Networks) April 2014 reply comments at 2.

expressly discourage applicants from signing multi-year agreements for Category Two services – particularly where the Commission has just taken clear steps to increase the predictable availability of Category Two funding.

Benjamin Moncrief, Vice President,
Government Relations
C SPIRE
1018 Highland Colony Parkway
Suite 300
Ridgeland, MS 39157

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Respectfully submitted,

TELEPAK NETWORKS, INC. AND CELLULAR
SOUTH, INC.

A handwritten signature in blue ink, appearing to read 'David A. LaFuria', with a horizontal line extending to the right.

David A. LaFuria
Jeffrey Mitchell
LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Its Counsel