

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	CC Docket No. 02-6
Draft Eligible Services List for)	GN Docket No. 09-51
Schools and Libraries Universal)	WC Docket No. 13-184
Service Program)	

Reply Comments of Philip B. Gieseler

These Reply Comments are submitted by Philip B. Gieseler as a friend of the Commission. I am a strong supporter of the objectives of E-rate and universal broadband, and a critic of the unwieldy process that the Commission recognizes must be addressed. Though now retired my career has been devoted to the implementation of new communication technologies, both inside and outside of government.¹

The observations and concerns raised by commenters offer a tip of the iceberg view of the many problems and complexities that will plague E-rate if the Commission continues to wrestle with, as one commenter indicated, “pick[ing] technology winners and losers.”²

The draft List raises many questions, some already recognized and likely many more that will be seen over time. These questions could be individually addressed, but that would only add to the confusion and uncertainty which currently marks E-rate, and, too, would likely add additional questions that must then be addressed. And on and on, in an environment of continued complex, and unintended consequences. The Commission’s important goal for “fast, efficient, and fair” would be seriously subverted.

Adding to the confusion is a history of ping-pong eligibility. E-mail account fees and web hosting were not eligible, but then eligible, and now are again ineligible. Dark fiber was ineligible, then eligible, then ineligible, and now eligible. VoIP was ineligible, then eligible, then ineligible, then eligible, and will again become ineligible. Caching was found to be ineligible (in the Commission’s “Tennessee”

¹ I have worked as a Program Manager in what is now the FCC’s Office of Strategic Planning, as founder and President of a network integration and consulting firm, and with USAC as the individual responsible for oversight of the Eligible Services List.

² See the comments of Joe St Sauver, available at <http://apps.fcc.gov/ecfs/document/view?id=7521827500>.

decision³) because, while useful, it was not necessary. But now it is deemed more important to broadband goals than essential services such as virus protection.

“Fast, efficient, and fair” is not possible under the current approach. Instead, the Commission should return to the original approach for eligibility that it wisely adopted in 1997.

In that year the Commission established eligibility standards that were within the scope of its universal service objectives, but were broadly stated. It would fund the conduit for communication, but not the communication itself. For example, funding for Internet Access was limited to “basic conduit access.” Applicants could receive support for any “commercially available telecommunications service.” Internal Connections components could be funded if they were “necessary to transport information all the way to individual classrooms” and “an essential element in the transmission of information within the school or library.”^{4 5}

These eligibility standards were adopted under the umbrella of two important core principles. First, the Commission held that “technological neutrality” would be critical, so that the marketplace rather than the Commission would be the forum for the winning methods.⁶ Second, it adopted the concept of “applicant choice,” so that applicants rather than the Commission would be the arbiters of what communication configurations best met their individual needs. The Commission emphasized this approach by stating:

[T]he establishment of a single set of priorities for all schools and libraries would substitute our judgment for that of individual school administrators throughout the nation, preventing some schools and libraries from using the services that they find to be the most efficient and effective means for providing the educational applications they seek to secure. (footnote omitted)⁷

The Commission charged USAC with the responsibility for administering its eligibility policies based on these concepts and examples. Thus, the Eligible

³ See http://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99216.txt, paragraph 41.

⁴ 1997 Report and Order in Docket 96-45, FCC 97-157, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-97-157A1.pdf. See for example, respectively, paragraphs 443, 29, and 459.

⁵ In addition to its broad eligibility concepts, the Commission provided examples of components that could and could not be funded within this paradigm. A router could be funded because it was necessary to provide communication all the way to the individual classroom. A classroom personal computer was not eligible because it was not necessary for that purpose. See the 1997 Report and Order, paragraph 460.

⁶ 1997 Report and Order, for example paragraph 49.

⁷ 1997 Report and Order, paragraph 432. See also continued emphasis of this concept in paragraphs 29, 425 and 431.

Services List was created as USAC's principal method for providing eligibility guidance to applicants.

In this writer's view, two related changes took place over time that undermined the legitimacy of a USAC-issued Eligible Services List. First, although initial Lists provided a specific reference to the FCC policies and paragraph numbers, and hence provided the rationale for USAC's administrative interpretations, this information did not appear in later Lists. The List became disengaged from the underlying FCC policies. Second, later lists included components that appeared to go beyond actual Commission policy. For example, originally "E-mail account fees" and "web hosting" were indicated by USAC as not being eligible for funding. Even though no Commission Order provided for an expansion of "basic conduit access" to the Internet, later USAC ESL's provided eligibility for these technologies, arguably indicating that USAC was engaged in its own policymaking rather than limiting itself to administration of FCC policies.

In 2003 the FCC took responsibility for the publication of the Eligible Services List, and thus the individual entries in the List became full FCC policy.⁸ This is how the FCC become involved in the weeds of eligibility, moving away from the broad concepts on which E-rate was originally based.

Eligibility has been transformed away from these core principles into a set of highly specific technologies that lack a unifying principle. The only way that USAC will be able to administer eligibility is to deny any technology that is not specifically indicated as eligible in the List. Centralized, one-size-fits-all limitations will be exacerbated, exactly opposite what was envisioned.

Nit-picky eligibility standards do not foster E-rate objectives; they undermine them.

The Commission can return to a more consistent and effective approach by reasserting the concepts of technological neutrality and applicant choice. It can define eligibility in broad terms in the new era of broadband funding with statements such as:

Funding can be provided for technology configurations that are an integral component part of broadband services.

Eligible broadband funding must serve principally as the conduit for communication all the way to individual classrooms and public areas of a library.

⁸ See Third Report and Order and Second Further Notice of Proposed Rulemaking in Docket 02-6, FCC 03-323, paragraph 40, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-323A1.doc.

Importantly, such a set of broad statements should allow ancillary services to be provided, as is the case under the Commission's current rules. USAC would be directed to rapidly approve funding requests that are focused on the provision of broadband, even if the overall broadband offering provided minor, related additional features.⁹ Intense oversight of whether a technology offering also includes a minor ineligible feature misses the point. Technology innovators attempt to provide ever-better offerings to the overall public, and this is a strong positive. Burdening the education and library sector with complex subtractions for today's modern components simply pushes the beneficiaries of E-rate into second class status.

Comments to the draft List have underscored that there are many important areas of eligibility beyond a list of components. Constituents don't actually need a List as much as they need a clear E-rate Eligibility Guide that, in plain English, outlines various eligibility details such as ancillary use, duplicative services, on-premise Priority 1 equipment, redundancy, funding for up-front infrastructure, and other details such as were previously outlined in the ESL's Special Eligibility Conditions.

Overall, this revised approach to eligibility would transition the view of Washington, DC personnel from rigid bureaucrats to true public servants.

A question could arise whether a more flexible set of eligibility standards would foster abuse. This would not be the case for several reasons. First and perhaps foremost, an introspective look by the Commission at the complexities it has set into place would reveal that those complexities are the root cause of most supposed "abuse." Simplification would free applicants to meet the true objectives of E-rate rather than to be beholden to rigid standards that can stand in the way. *Bona Fide* waste, fraud, and abuse would continue to be uncovered and prosecuted with the assistance of law enforcement personnel, as is now the case.

Second, the Commission has created an important first step in improving the incentives of applicants to choose technology solutions wisely when it decreased the maximum discount percentage for Category Two services to 85%. Time will tell if this decrease is sufficient of whether a lower maximum discount is necessary. Third, the days of significant "gold-plating" are over (e.g., a small school buying an oversized \$50,000 router) because applicants overall are much better informed about the technology choices available to them. Fourth, and of particular note, the Commission has capped Category 2 funding at \$150 per student, so applicants now are particularly aware that technologies must be selected wisely.

⁹ The Commission might wish to reassert to USAC that the ancillary rule is an important tool available to applicants, and that cost allocation should not be demanded when the terms of the rule are met.

The Commission can obtain the important public policy objectives that it seeks in a fast, fair, and efficient way by standing back and allowing a thriving technology marketplace to operate. It need not “tell” applicants the specifics of how they should achieve broadband objectives. Rather, the Commission should “allow” and “empower” applicants to do so.

The Commission hears from many concerned constituents as it evaluates new policies. Behind the scenes there is an additional constituency that does not always have sufficient voice, and that is the individuals charged with improving this nation through better education, but who are burdened with form after form and review question after review question—or those who have been denied for petty reasons and those who have been wrongly denied and must wait years for relief. These concerns address more than just the Eligible Services List and how it must be significantly improved, but they are relevant because true modernization of eligibility is a fundamental and required step.

Respectfully submitted,

Philip B. Gieseler

P.O. Box 25
Jamaica, VT 05343
pgieseler@gmail.com