



**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)
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**INITIAL COMMENTS ON THE FY 2010 DRAFT ELIGIBLE SERVICES LIST FOR
SCHOOLS AND LIBRARIES UNIVERSAL SERVICE MECHANISM
(DA 09-1233)**

The State E-rate Coordinators’ Alliance (SECA) submits these Comments in accordance with the FCC’s Public Notice released June 2, 2009 (DA 09-1233) seeking comment on USAC’s proposed Eligible Services List (“ESL”) for Funding Year 2010.

SECA accomplishes its work through the resources of its 87 individual members who provide statewide E-rate coordination activities in 46 states and 2 U.S. territories. Representatives of SECA typically have daily interactions with E-rate applicants to provide assistance concerning all aspects of the program. SECA provides face-to face E-Rate training for applicants and service

providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the Federal Communications Commission (FCC or Commission). SECA members typically provide more than 1300 hours of E-rate training workshops annually to E-rate applicants and service providers. In addition to the formal training hours, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails.¹

Further, several members of SECA work for and apply for E-rate on behalf of large, statewide networks and consortia that further Congress' and the FCC's goals of providing universal access to modern telecommunications services to schools and libraries across the nation.

In addition to their roles as State E-rate trainers and coordinators, most SECA members also provide the following services to the program: technology plan approval; applicant verification assistance to the Administrator's Program Integrity Assurance (PIA) Division; verification to the Administrator of applicable state laws confirming eligibility of certain applicant groups; contact of last resort to applicants by the Administrator; and verification point for free/reduced lunch numbers for applicants. Hence, SECA members are thoroughly familiar with E-Rate regulations, policies and outreach at virtually all levels of the program.

¹ Our Alliance operates without any administrative staff and no administrative funds are allocated from E-rate or any other source of federal funds to offset the States' respective costs of funding the State E-rate Coordinator positions.

I. SECA Applauds USAC and the FCC for the Timely Issuance of the ESL Public Notice in Early June, Which Hopefully Will Enable the Earlier Release of the Final ESL Than in Prior Years.

Before offering any substantive comments, SECA wants to applaud USAC and the FCC for the significant procedural shift associated with this year's issuance of the FY 2010 ESL Public Notice in early June. In past years, the draft ESL typically has been released in mid to late July, and the final approved ESL has been issued midway through the fall. Applicants have found it very challenging to utilize and incorporate any changes to the ESL into their E-rate procurements which typically get underway in late summer and early fall. Further, the FCC has had to waive its regulation concerning the ESL, which contemplates that the upcoming funding year's ESL will be available to applicants at least 60 days prior to the opening of the form 471 filing window. 47 C.F.R. §54.522.²

This year's earlier issuance of the ESL Draft compared to prior years offers the opportunity to the FCC to release the final approved FY 2010 ESL in the late summer or early fall, as E-rate applicants undertake their FY 2010 E-rate procurements, and for the new ESL to be available to applicants well before the form 471 filing window opens for FY 2010. SECA encourages the FCC to build on the momentum prompted by the early June release of the draft ESL and to issue the final approved ESL as quickly as possible. We respectfully request that the ESL continue on a fast track for processing and issuance of the final ESL.

² The same regulation requires USAC to submit the draft ESL by June 30 of each year. It is evident that this year that USAC submitted the draft ESL well before the June 30 deadline and USAC is to be commended.

II. SECA Agrees With Many of the Proposed Changes to the FY 2010 ESL.

SECA concurs with the following proposed changes to the FY 2010 ESL:

- A.** Listing Ethernet as an eligible digital transmission technology: This modification reflects the evolution of telecommunications technologies that are commercially available and is a clarification of previously eligibility.

- B.** Text Messaging is an eligible telephone service component: This service has become as ubiquitous as voice phone calls and emails as a means of communication. It is important and helpful to clarify that text messaging is an eligible telephone service component and not a stand-alone service. The distinction – which is important – is because components are not required to be separately competitively bid or itemized or described on E-rate applications or Item 21 attachments, similar to other telephone service components such as directory assistance charges.

- C.** Adding VOIP as an eligible service in the Internet Access service and telecommunications categories: This modification makes clear that the technology may be used in the delivery of both services. The FCC accurately pointed out that the regulatory clarification of VOIP as a telecommunications or information service does not have E-rate regulatory implications since both telecommunications and Internet Access service are Priority 1 services. Because Internet Access service may be provided by a company that is not classified as a telecommunications common carrier, the inclusion of VOIP as part of the Internet Access service

category allows a broader group of vendors to compete to provide this service to E-rate applicants.

D. Inclusion of wireless LAN controllers as eligible internal connections equipment:

We suggest that the FCC make clear that this equipment shall not be eligible to be leased as Priority 1 equipment (since the equipment is related to local area network operations and not to wide area network service).

E. User licenses for interconnected VOIP systems: We agree that these licenses should be eligible under internal connections as user based software, consistent with the eligibility of user licenses for other eligible operating system software.

F. Eligibility of unbundled warranties under the basic maintenance of internal connections category of service: Warranties are a cost-effective means of maintaining eligible internal connections equipment and may alleviate the need to purchase stand-alone maintenance service contracts.

G. Conditional (and limited) eligibility of virtualization software: SECA is unclear by the definition included in the ESL what USAC means by the term of virtualization software. We understood it to mean software that facilitates communication between dumb terminals and a central server, but there is no mention of this function in the draft ESL. We urge the Commission to provide more specificity in the final ESL pertaining to this item.

H. Ineligibility of Broadcast Messaging Service: This service does not transmit communications and/or the Internet to classrooms and libraries but rather it transmits pre-recorded, outbound calls. As such, it does not meet the statutory and regulatory requirements that Congress and the FCC have established for E-rate funding.

SECA also is concerned that the cost of the service will impose substantial upward pressure on the E-rate funding cap. We are aware that several companies offer a fee-based, per student annual subscription fee of about \$3.00 per student. According to NCES, there are approximately 49.8 million students enrolled this fall in public elementary and secondary schools, from grades pre-K through 12 grades. At the cost of \$3.00 per public school student, the likely cost to the fund would be \$150 million annually and that figure does not take into account the impact of library and private school E-rate applicants' requests. There simply is not sufficient funding available to subsidize this service and it would be extremely difficult, if not impossible, for applicants to perform a cost-allocation so that E-rate only pays for emergency calls and not other non-emergency related messages.

I. Ineligibility of Power Distribution Units, Video-On-Demand Servers, Softphones, Interactive White Boards and Email Archiving beyond the storage component that allows current emails that have been received to be viewed by the user: None of these items is essential for transmitting telecommunications or Internet Access

Service to classrooms and libraries. Inclusion of these items as eligible would be inconsistent with E-rate eligibility principles and would simply increase demand for already scarce Priority 2 funding.

III. All Telecommunications Surcharges and Fees Should Be Eligible.

There are dozens of fees and surcharges that telecommunications carriers place on phone bills, for which some – but not all – are eligible for E-rate discounts. Some of these fees include:

- Subscriber Line Charge
- FCC Charge for Network Access
- Federal Line Cost Charge
- Interstate Access Charge
- Federal Access Charge
- Interstate Single Line Charge
- Customer Charge
- Universal Connectivity Fee
- Universal Service Administrative Fee
- Local Number Portability Fee
- Carrier Universal Service Charge
- Minimum Monthly Charge
- 911 Fee
- E911 Fee
- Special Tax
- Federal Excise Tax
- Detailed Billing Fee
- Paper Statement Fee
- Property Tax Allotment
- Administrative Expense Fee
- USF Administrative Fee
- Regulatory Surcharge
- Regulatory Recovery Cost Fee
- White Page Fees
- Additional Directory Page Listing
- Non-Published Phone Number Fee

These fees are minimal yet they have become a huge burden on schools and libraries who are expected to review every line of every bill, many of which are hundreds of pages each month, to

identify which of these small fees must be cost allocated and removed from their BEAR reimbursement or their Form 471 request. This task is further complicated when the school or library personnel try to decipher which charges are eligible and which are not because there is no consistent naming conventions between carriers and no comprehensive list of which charges are eligible and which are not.

For example, a small, simple AT&T long distance bill lists the following items under Surcharges:

- Federal Universal Connectivity Charge
- Administrative Expense Fee
- Property Tax Allotment
- Federal Regulatory Fee

To anyone who is not an SLD PIA reviewer or account manager for AT&T, the eligibility of these charges is difficult to determine.

To further use the AT&T example, schools and libraries have no choice as to whether these fees are assessed, as the company is passing through the charges to cover their expenses of doing business. We are not arguing that companies should not have the right to pass along these charges, although one could do just that for the USF administrative fees, but rather that such fees are required by the phone companies and are not optional. They are no different than a tax that is being imposed, and all taxes are eligible for E-rate discounts. In fact, the Eligible Services List already states that costs to subscribe to a telephone service are generally eligible for discount, and certainly since these charges are not optional, they are therefore required in order to subscribe to the phone service.

Another way of looking at it is that most of these services are already eligible and receiving E-rate support. This is because many companies have billing systems that bundle all of these charges in with their usage charges or monthly recurring charges, and therefore they are and have been eligible for E-rate support for many years. School and library customers of telecommunications companies that have not adopted this bundled billing philosophy should not be penalized and be made to cost allocate these charges.

The cost for school and library personnel to page through hundreds of pages each month to identify these charges severely outweighs the actual costs of the fees themselves which in many cases are less than a dollar per charge. This is in addition to the vast time spent by PIA reviewers and USAC invoicing reviewers who are required to review every line of every bill submitted to ensure that each of these fees has been properly removed from the request or invoice.

In the FCC's Fifth Report and Order, referring to the recovery actions for improperly disbursed funds, the Commission recognized that there is some threshold amount of improperly disbursed funds below which it is not economically feasible for USAC to seek recoupment. "We conclude that it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking recovery outweigh the dollars subject to recovery." Schools and Libraries Universal Service Support Mechanism, Fifth Report and Order, FCC 04-190 (Order released August 13, 2004) at ¶35. Accordingly, the FCC directed USAC to not seek recovery of such "*de minimis*" amounts. The FCC further directed USAC to provide the Wireline Competition Bureau and the Office of Managing Director sufficient

information regarding the administrative costs of seeking recovery of improperly disbursed funds so that a *de minimis* amount could be determined. While the *de minimis* amount, if set, was never publicly announced, we are certain it is more than the amount of any of the surcharges or fees that are deemed ineligible on customers' phone bills.

SECA strongly urges the Commission to clarify that all surcharges and fees imposed by telecommunications carriers be eligible for E-rate support.

IV. Inclusion of Password Protected Pages and Intranet Pages as Eligible Is Inconsistent with the E-rate Definition of Internet Access Service and Should Not Be Permitted.

The FY 2010 draft ESL and the FCC's clarification are markedly different from the draft FY 2009 ESL which proposed to clarify that intranet pages were *not* E-rate eligible. SECA continues to advocate, consistent with its FY 2009 draft ESL comments, that intranet pages should *not* be eligible.

SECA recognizes that certain sensitive information is not appropriate to be posted on a district's public website and in no way advocates that such information should be made public. But there is no longer a distinction between a school district's public website where the public can view information about a particular educational institution, and a school district's portal or student information system where students, teachers, administrators and parents view online grades, homework, and attendance records. In fact, even educational content providers are claiming that because webhosting of password-protected pages are eligible, so, too, is the hosting of their product.

In 2009, in response to inquiries, USAC issued guidance clarifying that only public website pages were eligible under webhosting. The FCC, after meetings with affected vendors, then directed USAC to overturn their guidance and declare that password-protected pages were eligible. Unfortunately, this determination created mass confusion in the applicant community and to this day almost no one can explain where the boundary is between what password-protected content is eligible to be hosted and what is not. And based on our review of the standard PIA questions, USAC is not even asking what content is being hosted behind the password-protected pages.

Although we believe the good intention of the FCC was to not require applicants to perform a cost allocation for the portion of the webhosting fee that is attributable to pages that contain private student information, a giant loophole has now been created whereby any vendor who provides password protected content can have an extremely high percentage of the cost of their service paid for with E-rate discounts. In other words, USAC is now paying for educational portals, nearly in their entirety. We doubt this was the Commission's intention when it deemed password-protected pages to be eligible.

As a result, we strongly urge the Commission to reject USAC's recommendation and instead formally determine that password-protected pages are not eligible for E-rate discounts.

The fundamental precept of allowing web hosting to be eligible for E-rate was based on its relationship to and being a part of the Internet Access service category. The Eligible Services List makes clear, as recently as the FY 2009 list currently in effect, that "[t]o qualify as Internet access, all services must reach the boundary of public Internet space." Yet Intranet pages, by

definition, are *not* part of the public Internet space. These pages, therefore, should *not* be eligible for E-rate.

SECA's concerns related to the specific issue at hand – intranet and password protected pages – is equally applicable to the ever expanding definition of web hosting. Web hosting first appeared as an eligible service in the November 2000 version of the Eligible Services List. It was described as an adjunct or ancillary service to Internet access service:

Web Hosting is an Internet service provided by an Internet Service Provider. The ISP will host a school or library's web site (www.schoolname.org) as part of the ISP bundled service offering, or as an optional service. The service is eligible if bundled with Internet access at no additional charge. It is not eligible if provided as a separate line item, with a separate identifiable charge.

November 16, 2000 Eligible Services List at page 41. Separate fees incurred for web hosting and/or from third party vendors, that is, a vendor other than the applicant's Internet access service provider, were not permitted. It was allowed to be funded because it was bundled as part of Internet access service.

In the following year's Eligible Service List dated October 17, 2001, the FCC stated:

Web Hosting is an Internet service provided by an Internet Service Provider. The ISP will host a school or library's web site (www.schoolname.org) as part of the ISP bundled service offering, or as an optional service. Web hosting is not eligible for discount provided as a separate line item, with a separate identifiable charge. However, applicants may choose an Internet Access service that includes web hosting, under the conditions given in the listing for Bundled Access in this section.

October 17, 2001 Eligible Services List at page 13.

The Bundled Access listing stated:

Some Internet access services may include bundled features that are not themselves eligible, such as substantial specialized content. If these ineligible

components are priced or sold separately, this cost must be subtracted from the amount eligible for discount. If the ineligible components are not priced or sold separately, the full service can be eligible for discount, but only if content is minimal and the applicant determines that the bundled service is the most cost-effective means for obtaining Internet access.

The evaluation of cost-effectiveness must be made without considering the benefits related to ineligible features.

Id. at page 12.

Again, like the prior year's definition, web hosting was eligible only as an adjunct or ancillary service to Internet Access service. It was not eligible as a stand-alone service.

The entry for web hosting in the October 18, 2002 Eligible Services List was almost identical to the prior year's entry and as restrictive.

In FY 2004, for the first time, the FCC allowed web hosting to be eligible for E-rate discounts as a *separate fee-for-service that was unbundled from Internet access service*. The service, however, was supposed to be limited to the hosting service only and not include creation or modification of content. October 10, 2003 Eligible Services List at page 12.

The ESL entry stated:

Web Hosting is an Internet service provided by an Internet Service Provider. The ISP will host a school or library's website (www.schoolname.org) as part of the ISP bundled service offering, or as an optional service. Web Hosting services that provide a means for a school or library to display content on the Internet is eligible for discount. However, eligibility is limited to the hosting service only, and not the creation or modification of content, which is not eligible. (Effective for Fund Year 2004 and later years.)

See also, Eligible Services List for FY 2005 at page 23 and Eligible Services List for FY 2006 at page 23.

In the FY 2007 Eligible Services List, the FCC tried to further clarify and differentiate between the eligible web hosting services and ineligible services that may be offered in conjunction with web hosting:

A web hosting service that provides a means for a school or library to display content on the Internet is eligible.

Domain name registration necessary for the creation of a school or library website is eligible for discount.

Funding is limited strictly to the eligible web hosting function. Some web hosting services may include ineligible features, such as software applications and content editing features. Funding will not be provided for such features. Any cost allocation must be based on tangible information that provides a reasonable and appropriate delineation between the eligible and ineligible components.

FY 2007 Eligible Services List at page 7. In addition to these aspects of eligible web hosting, the FCC also clarified that maintenance and technical support appropriate to maintain reliable operation of the web site is eligible. *Id.* Creation of content or content editing features as well as software applications that may be bundled with the eligible web hosting function are not supposed to be eligible for E-rate. *Id.*

The FY 2008 Eligible Services List tried to further refine the definition of eligible web hosting:

Funding is limited strictly to the following eligible web hosting functions:

- Provision of web site traffic (bandwidth)
- Provision of disk space for storing applicant provided content
- Provision of File Transfer Protocol (FTP) transfer or a Web interface to upload files.

Software applications, end-user file storage and content editing features are continued to be classified as ineligible. FY 2008 Eligible Services List at page 7. Maintenance and technical support were also eligible. *Id.* at page 8.

Although the FCC has tried to establish clear boundaries between eligible and ineligible web hosting, vendors have seized the business opportunity that was presented to them beginning with FY 2004 – when third party vendors could provide a separate web hosting service independent from Internet Access service – and have bundled their content, software application and file storage features with the eligible web hosting features to provide one stop shopping to applicants.

The FCC's Eligible Services List has tried to make clear that all value added services beyond the physical rental of space on a vendor's server for the hosting of the applicant's web site, the physical connection (bandwidth) between the vendor's server and the applicant's premises and the ability for the ability to transfer files and content onto the web site that is hosted on the vendor's server are not eligible. Nonetheless, vendors have become adept at packaging their services so to increase the cost of the so-called eligible services and decrease the cost of the ineligible services. And USAC has consistently approved these company-determined cost allocations, most at about 95% eligibility.

As a result, the pricing of web hosting in the K-12 market has become totally skewed compared to other commercially available web hosting services. In the commercial marketplace other than the K-12 sector, the leasing of dedicated space on a vendor's service for hosting of a web site,

provision of bandwidth and file transfer protocol service – the features that are classified as eligible web hosting – amount to modest monthly charges of well under \$100 per month.

For example, Yahoo.com offers a small business web hosting option that includes unlimited disk storage, unlimited file transfer, maintenance and technical support – *plus* ineligible bundled features such as customized design tools and unlimited email storage – for the monthly fee of \$9.95 per month for a one year contract. See <http://smallbusiness.yahoo.com/webhosting/hostingpricing.php>.

In contrast, when K-12 web hosting vendors are requested to perform cost allocations to segregate their eligible and ineligible features, these allocations routinely result in fees for eligible features that are significantly higher than the web hosting fees charged in other market sectors.

Consequently, the demand for funding of Internet Access Service keeps climbing each year which results in less funding be made available for Priority 2 internal connections.

SECA urges the FCC to clarify that with respect to web hosting service, as a condition of eligibility, rather than rely on after-the-fact cost allocations, contracts with service providers should be required to separately itemize the pricing of E-rate eligible components (physical rental of space on a vendor's server for the hosting of the applicant's web site, the physical connection (bandwidth) between the vendor's server and the applicant's premises, the ability for the ability to transfer files and content onto the web site that is hosted on the vendor's server, and maintenance and technical support appropriate to maintain the reliable operation of the web site) and ineligible components (website creation tools, software applications, end-user file storage

and content editing features. This approach will hopefully result in a more accurate pricing structure for E-rate eligible web hosting features.

V. Conclusion

SECA requests the FCC to modify the FY 2009 Eligible Services List consistent with the comments submitted herein.

Respectfully Submitted by:

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