



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON DRAFT ELIGIBLE SERVICES LIST FOR SCHOOLS AND LIBRARIES UNIVERSAL SERVICE PROGRAM

CC Docket No. 02-6

Comment Date: July 15, 2011
Reply Comment Date: July 25, 2011

Section 54.502(b) of the Commission rules requires the Universal Service Administrative Company (USAC) to submit annually a draft eligible services list (ESL) for the schools and libraries universal support mechanism (also known as the E-rate program) for the following funding year.¹ By this public notice, we seek comment on the ESL changes we propose for funding year 2012. The following edits to the ESL provide clarifications or additional information, and are not intended to change the level of eligibility for services from the previous funding year:²

- updated the ESL introduction to indicate that E-rate funds are allocated in accordance with rules of priority, per Commission rules.³
- clarified the ESL introduction to remind applicants that any telecommunications service is eligible for E-rate funding, however, for the remaining funding categories, funding is limited to those products and services that are specifically listed in the ESL.⁴

¹ See 47 C.F.R. § 54.502(b).

² Certain eligible service entries (*e.g.*, “Distance Learning and Video Conferencing” in the Internet access category) and other language has been transferred from certain sections into other appropriate sections of the ESL. These changes are format changes and are not substantive. We have also made an effort to streamline statements that repeat themselves throughout the ESL (*e.g.*, reminding applicants that cost-allocation must be based on tangible information that provides a reasonable and appropriate delineation between the eligible and ineligible components). While these concepts have been removed from certain sections, they do remain in the document in a section we determined to be appropriate for the concept (*e.g.*, the reminder regarding cost-allocation is listed in the “Special Eligibility Considerations” section of the ESL).

³ See 47 C.F.R. § 54.507(g).

⁴ There were other minor changes to language or transfer of language from one paragraph to another in this section as well (*e.g.*, the sentence stating that “services that are not eligible for E-rate discounts are listed at the end of each category,” was moved to another paragraph in the introduction to the ESL).

- updated the ESL introduction to note that the services funded under the “Learning on the Go” program satisfy the requirement that services must be used for an “educational purpose.”⁵
- removed the explanation for including interconnected voice over Internet protocol (“interconnected VoIP”) in the ESL because interconnected VoIP was affirmatively added to the list in accordance with a December 2009, Commission order.⁶
- deleted the entry for “Other Eligible Telecommunications Services” and moved the information therein to appropriate sections of the Telecommunications Services category.⁷
- updated the entry for dark and lit fiber service in the Telecommunications category based on the *Sixth Report and Order* and a subsequent public notice providing additional guidance.⁸
- clarified the introduction of the Internet Access category by replacing and updating the description of eligible Internet access service with the definition of Internet access from the Commission’s rules.⁹
- deleted the entry for “Distance Learning and Video Conferencing” from the Internet Access category and moved the descriptions listed therein to the entry for “Internet Access.”¹⁰

⁵ See *Wireline Competition Bureau Announces Selected Applications for the E-rate Deployed Ubiquitously (EDU 2011) Wireless Pilot Program*, WC Docket No. 10-222, Public Notice, 26 FCC Rcd 3469 (Wireline Comp. Bur. 2011) (announcing the applicants selected for the Learning on the Go program, formerly named the EDU2011 Wireless Pilot Program); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18785-18787 (2010) (“*Sixth Report and Order*”).

⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6525 (2009) (“*2009 ESL Order*”). The language about the regulatory classification of interconnected VoIP service has been relocated to the reference to interconnected VoIP in the telecommunications services and Internet access categories.

⁷ The following changes were made as a result of the deletion of the “Other Eligible Telecommunications Services” entry: 1) the language regarding support for maintenance and technical support and charges for installation and configuration was moved to the introduction to the Telecommunications Services category and 2) the language regarding voice and video conferencing services was moved to the entry for “Digital Transmission Services.”

⁸ *Sixth Report and Order*, 25 FCC Rcd at 18765-18773; *Wireline Competition Bureau Provides Guidance Following Schools and Libraries Universal Service Support Program Sixth Report and Order*, CC Docket No. 02-6, GN Docket No. 09-51, Public Notice, 25 FCC Rcd 17332, 17334-17337 (Wireline Comp. Bur. 2010).

⁹ 47 U.S.C. § 54.5. Aside from replacing some of the language therein with the language from the rule itself, there were other minor changes to the introduction to the Internet access category made to firm up the language where it was repetitive.

¹⁰ There is no change to the eligibility for distance learning and video conferencing services in the Internet Access category. The language regarding “Videoconferencing components” was deleted because it is unnecessary and the inclusion of eligible videoconferencing components in the Internal Connections category is self-explanatory. We have also, as indicated herein, re-worded some of the language regarding eligible and ineligible web hosting services to assist applicants.

- deleted the words “Internet-based” before the word “e-mail” in the entry for “E-mail Service” to conform to the definition of Internet access in section 54.5 of the Commission’s rules.¹¹
- clarified that satellite service is one of the access technologies that could provide eligible Internet access.¹²
- clarified that firewall services may not be provided by a vendor other than the Internet access provider and may not be priced out separately.¹³
- clarified that mobile hotspot service designed for portable electronics is a type of eligible Internet access service if used for educational purposes, if off-campus use is cost-allocated, and when service is not duplicative of other wireless Internet access service.¹⁴
- changed the name of the “Other Eligible Internet Access Services” entry to “Internet-Related Services” because the services listed in this entry do not, on their own, provide basic conduit access to the Internet.
- clarified the “Internet-Related Services” entry to explain that lit or dark fiber can be requested as a priority one service in the Internet access category.¹⁵
- clarified the web hosting description in the “Internet-Related Services” entry to assist applicants in understanding the eligible portion of a web hosting service.¹⁶
- revised the description of web hosting services that are not eligible for E-rate discounts and moved this description to the entry for Internet Access services that are not eligible.¹⁷

¹¹ 47 C.F.R. § 54.5. The rule uses the term “electronic mail services (e-mail)” and states that e-mail is an element of Internet access, but does not use the term “Internet-based e-mail.” In addition, the term “Internet-based e-mail” is not defined in the rules.

¹² Satellite service had been specifically mentioned in the ESL as a type of eligible Internet access service but then was inadvertently left off the list. *See, e.g.*, Schools and Libraries Eligible Services List, dated Oct. 17, 2001, http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101701.pdf, at 9 (last visited June 13, 2012).

¹³ *Sixth Report and Order*, 25 FCC Rcd at 18808-18809. The reference to separate pricing for firewall service components was removed from the entry for services that are not eligible as Internet access because this has been clarified by this language about firewall services in the entry for eligible Internet access.

¹⁴ *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9209-9211, paras. 22-24 (2003) (stating that duplicative services are services that deliver the same functionality to the same population in the same location during the same period of time).

¹⁵ *Sixth Report and Order*, 25 FCC Rcd at 18766-18768, 25 FCC Rcd at 17335.

¹⁶ This is a clarification to the language only; there is no change in the eligibility of web hosting services. In the *Sixth Report and Order*, the Commission determined that web hosting will continue to receive priority one funding. *Sixth Report and Order*, 25 FCC Rcd at 18806-18807. Minor non-substantive language changes were made for “domain name registration” as well.

¹⁷ Again, there have been no substantive changes made to the eligibility of web hosting, but we have provided more specific language to clarify what will continue to be ineligible. Other bullets in this entry have been streamlined. For example, the bullet which contained the reference to Virtual Private Network services was moved up to the bullet for “services that go beyond basic conduit access to the Internet.”

- clarified that password protected pages are not eligible for E-rate discounts if they are established exclusively for use by librarians, administrators, school officials or teachers.¹⁸
- clarified that firewall components are eligible in the “Data Protection” and “Servers” entries in the Internal Connections category.¹⁹
- clarified the descriptions for software that is not eligible for discounts.
- moved the statement regarding the ineligibility of certain kinds of antennas to the entry for Internal Connections components that are not eligible.²⁰
- clarified the restrictions on remote access to homes or other non-school or non-library sites for residential schools that serve unique populations as explained in the *Sixth Report and Order*.²¹
- added smartphones and tablets as examples of end-user equipment that is not eligible for E-rate discounts.²²
- revised the introduction to the Basic Maintenance of Internal Connections (“BMIC”) category and the entry for Basic Maintenance of Internal Connections that is not eligible to conform with the *Chicago Order*, in which the Commission determined that technical support contracts may be cost-allocated, and clarified that applicants that seek on-site technical service must present USAC with sufficient evidence that, for their specific situation, on-site service is more cost-effective than off-site service.²³
- revised the “Maintenance and Technical Support of Internal Connections” entry for the BMIC category to conform to the *Sixth Report and Order* requirement that BMIC be reimbursed based on actual work performed.²⁴

¹⁸ See 2009 ESL Order, 25 FCC Rcd at 6573.

¹⁹ The *Sixth Report and Order* stated that E-rate discounts are available for basic firewall protection, but such discounts would not be extended to support firewall protection beyond that which is included as part of an Internet access service. *Sixth Report and Order*, 25 FCC Rcd at 18808-18809. There was no mention of changes to the support levels for firewall components that had been funded as part of Internal Connections. Thus, the *Sixth Report and Order* maintained the status quo and any changes made to the ESL last year that would suggest ineligibility for firewall components in the Internal Connections category were inadvertent. See Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2011, Sept. 23, 2010, at 12 and 14, http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_110910.pdf (last visited May 23, 2011).

²⁰ Where possible, we consolidated the services and products that are eligible in the entries for eligible services and products, and the services and products that are not eligible in the entries for services that are not eligible. For example, the provision stating Client Access Licenses for ineligible software products are ineligible was moved from the entry for “Software” to the entry for internal connections components that are not eligible.

²¹ *Sixth Report and Order*, 25 FCC Rcd at 18778-18779.

²² Definitions for these products were also added to the ESL Glossary.

²³ *Requests for Review of Decisions of the Universal Service Administrator by Chicago Public Schools, SLD-288954 et al*, Docket No. 02-6, Order, 26 FCC Rcd 4114, 4118-4121 (2011).

²⁴ *Sixth Report and Order*, 25 FCC Rcd at 18809-18810; see also *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25

- clarified the entry for the Miscellaneous category that “Miscellaneous” services and products related to services requested in the Telecommunications category should be requested (via FCC Form 471) in the Telecommunications Services or Internet Access category, depending upon the nature of the service provider.
- clarified the entry for “Miscellaneous Fees and Charges” that contingency fees will be reimbursed based on actual work performed.²⁵
- clarified the language in the Miscellaneous category to show that a technology plan is not required for priority one services such as T-1 lines and dark fiber; also included dark fiber as another example of a service that is not duplicative when it is appropriate for the population served and the services to be received, and provides the necessary bandwidth requirements for a school or library’s technology needs.
- consolidated all of the special eligibility conditions pertaining to wide area networks into one entry.
- added definitions to the glossary for terms that were already in the ESL but had not been defined in prior years such as “failover” and “enhanced multimedia interface.”

This draft ESL is being proposed for the sole purpose of informing potential beneficiaries of the specific products and services that may be eligible to receive discounts under the E-rate program pursuant to section 254 of the Communications Act of 1934, as amended.²⁶ Pursuant to section 54.502 of the Commission’s rules, the final ESL for the upcoming funding year will be released at least 60 days prior to the opening of the E-rate application filing window.²⁷ We emphasize that this proceeding is limited to determining what services are eligible under the Commission’s current rules and is generally not intended to be a vehicle for changing any eligibility rules.

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference **CC Docket No. 02-6** and may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

FCC Rcd 17324, 17325-17326 (2010) (clarifying the funding procedures for BMIC contracts brought forth by changes in the *Sixth Report and Order*).

²⁵ This is similar to and conforms to the Commission’s recent decisions regarding upfront payments for basic maintenance. *Id.*

²⁶ 47 U.S.C. § 254.

²⁷ See 47 C.F.R. § 54.502(b).

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300 fax: (202) 488-5563;
- (2) Cara Voth, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B552, Washington, D.C. 20554; e-mail: cara.voth@fcc.gov; and
- (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, D.C. 20554; e-mail: Charles.Tyler@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁸ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.²⁹ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.³⁰

For further information, please contact Cara Voth, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

²⁸ 47 C.F.R. §§ 1.1200 *et seq.*

²⁹ See 47 C.F.R. § 1.1206(b)(2).

³⁰ 47 C.F.R. § 1.1206(b).

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