



PUBLIC NOTICE

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WIRELINER COMPETITION BUREAU SEEKS COMMENT ON A PETITION FILED BY THE STATE EDUCATIONAL TECHNOLOGY DIRECTORS ASSOCIATION SEEKING CLARIFICATION THAT REMOTE ACCESS TO VIRTUAL PRIVATE NETWORKS CAN BE FUNDED UNDER THE SCHOOLS AND LIBRARIES PROGRAM

CC Docket No. 02-6

Comment Date: July 23, 2012

Reply Comment Date: August 6, 2012

The Wireline Competition Bureau seeks comment on a petition filed by the State Educational Technology Directors Association (SETDA) asking for clarification on the use of funding from the E-rate program (more formally known as the schools and libraries universal service support program) for remote access by teachers and students to virtual private networks (VPNs).¹ Under the E-rate program, schools can only receive discounts on eligible services used primarily for educational purposes.² The Commission established a presumption that activities that occur on school property qualify as “educational purposes” under the E-rate program.³ At the same time, the Commission recognized that there are certain limited off-site activities that are integral, immediate, and proximate to the education of students, and therefore can be funded under the E-rate program because they serve an educational purpose.⁴ To the extent a school (or library) seeks to purchase services or facilities that would otherwise

¹ Letter from Douglas Levin, Executive Director, State Educational Technology Directors Association (SETDA), to Marlene Dortch, Office of the Secretary, Federal Communications Commission, CC Docket 02-6 (filed May 9, 2012) (Petition). SETDA describes itself as the principal association of state and territorial educational technology leaders.

² 47 U.S.C. § 254 (h)(1)(B) (noting that discounted services are to be provided to schools and libraries for educational purposes); 47 C.F.R. §§ 54.503(c)(2)(v), 54.504(a)(1)(vii) (requiring applicants to certify that services obtained through discounts from the E-rate program will be used primarily for educational purposes). In the *Schools and Libraries Second Report and Order*, the Commission amended the definition of “educational purpose” to clarify that, in the case of schools, “educational purposes” are “activities that are integral, immediate, and proximate to the education of students.” 47 C.F.R. § 54.500(b); see also *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Second Report and Order and Further NPRM, 18 FCC Rcd 9202, 9208, paras. 17-18 (2003) (*Schools and Libraries Second Report and Order*).

³ 47 C.F.R. § 54.500(b); *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

⁴ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, paras. 17, 19. The Commission provided examples of off-site activities that would be considered integral, immediate, and proximate to the education of students, such as a teacher or other school staff member’s use of wireless telecommunications services while on a field trip with school children. *Id.* at para. 19, n28.

be eligible for E-rate support,⁵ but are not primarily used for educational purposes, the school or library must reduce its funding request by the amount of the ineligible use.⁶

SETDA asks the Commission to clarify that remote access by students and teachers to schools' networks and resources is an educational purpose under the E-rate program.⁷ Specifically, SETDA requests that the Commission clarify that the use of VPNs, the most likely way students and teachers would remotely access a school's network from home or off-campus location, is an educational purpose under E-rate rules.⁸ VPNs have been eligible for support as a Priority 2 service.⁹ Granting SETDA's petition would clarify that schools that provide off-campus users with access to their VPN primarily for educational purposes are not required to cost-allocate the portion of their VPN use that occurs as a result of those off-campus users. According to SETDA, this clarification should not be "construed to support the expansion of the E-rate program to cover the cost of any such off-campus access or any mandates on schools that may not currently have a need for such services."¹⁰ SETDA argues that such a rule clarification would benefit students and schools by (1) allowing students to access digital content, services, and school-related files on a school network in the evenings and over the weekend; (2) permitting school-owned devices used outside of school to take advantage of school network content filtering; and (3) giving schools the ability to track student preferences for educational resources and give insights into individual student experiences with online educational content.¹¹

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. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). 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/>.

⁵ Some services and equipment, such as end user equipment, are not eligible for E-rate support despite the fact that they may be used for educational purposes. See, e.g., USAC web site, Schools and Libraries Universal Support Mechanism Eligible Services List for Funding Year 2012, dated Sept. 28, 2011, http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf (last visited June 20, 2012) at 6, 10-11, 18-20 (2012 ESL).

⁶ 47 C.F.R. § 54.504(e).

⁷ Petition at 1.

⁸ *Id.*

⁹ The ESL for funding year 2012 defines VPN as data protection components that use encryption and/or tunneling services in order to provide highly secure communication over the public Internet or, in some cases, over point-to-point links. 2012 ESL at 13, 48. VPNs are eligible for funding as Priority 2 internal connections. Under the Commission's rules, first priority for E-rate funding is given to requests for telecommunications services, telecommunications, and Internet access (Priority 1 services) before available remaining funds are allocated to requests for support for internal connections and basic maintenance of internal connections (Priority 2 services). See 47 C.F.R. §54.507(g).

¹⁰ Petition at 1.

¹¹ *Id.* at 1-2.

- 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.

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 and boxes 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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The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

¹² 47 C.F.R. §§ 1.1200 *et seq.*

For further information, please contact James Bachtell, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-7385.

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