



PUBLIC NOTICE

Federal Communications Commission
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DA 16-615

Released: June 3, 2016

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROPOSED ELIGIBLE SERVICES LIST FOR THE E-RATE PROGRAM

WC Docket No. 13-184

Comment Date: July 5, 2016

Reply Comment Date: July 20, 2016

The Wireline Competition Bureau (Bureau) seeks comment on the attached proposed eligible services list (ESL) for the schools and libraries universal support mechanism (more commonly known as the E-rate program) for funding year 2017.¹ We invite stakeholders to comment on any aspect of the proposed ESL, and particularly welcome comments based on applicants' and other interested parties' experience with the ESLs for recent funding years. Below, we identify changes between the funding year 2016 ESL and the proposed funding year 2017 ESL, and seek comment on whether we should adopt or modify those changes:

- The proposed ESL revises the description of eligible dark fiber service under Category One to read "Leased Dark Fiber (including dark fiber indefeasible rights of use (IRUs) for a set term)." This revision is intended to further explain the distinction between leased dark fiber and self-provisioned fiber under E-rate program rules.² We seek comment on this proposed clarification.
- The proposed ESL deletes "special construction" from Note 2 under eligible Category One data transmission and Internet access services – thereby better reflecting the existing requirement that applicants that seek bids for either leased dark fiber or self-provisioned fiber also must seek and fully consider bids for leased lit fiber service, regardless of whether the funding request includes special construction.³

¹ See 47 CFR § 54.502 (detailing the procedures for seeking comment on a draft E-rate program ESL); Attachment, Draft Schools and Libraries Eligible Services List for Funding Year 2017.

² See *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, para. 31 (2014) (*Second E-rate Modernization Order*) ("Dark-fiber leases and other dark-fiber service agreements are commercial arrangements in which a broadband customer purchases use of a portion of a provider-owned and maintained fiber network separately from the service of lighting (*i.e.* transmitting information over) that fiber."); *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, 18772, para. 19 & n. 51 (2010) ("For purposes of the E-rate program, we will consider Indefeasible Rights of Use (IRU) purchase agreements as a lease of dark fiber.").

³ *Second E-rate Modernization Order*, 29 FCC Rcd at 15553, 15557, paras. 39, 47-48.

- The proposed ESL (i) moves the section previously titled “Eligibility Explanations for Certain Category One Services” so that it appears after the description of Category Two supported services, and (ii) revises the section header to include Category Two services. The change to the description and location of this section reflects the fact that each of the three eligibility explanations in this section include a discussion of both Category One and Category Two services.
- In the section titled “Eligibility Explanations for Certain Category One and Category Two Services,” the proposed ESL includes a new explanation of how to classify connections between multiple buildings of a single school. The explanation distinguishes between connections among multiple buildings of a school that are located on a single campus and connections between multiple buildings of a single school that are located on separate campuses. It treats the former as Category Two connections and the latter as Category One connections, in accordance with E-rate program rules which treat Wide Area Network (WAN) connections as Category One services. The E-rate rule’s definition of WAN explicitly excludes “connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.”⁴ The rules also specify that internal connections eligible for Category Two support are services “necessary to transport or distribute broadband within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.”⁵ Consistent with those definitions, the proposed explanation and definition of “campus” distinguishes between: (1) connections between instructional buildings on a single school campus that are Category Two internal connections; and (2) connections between instructional buildings of a single school that are on separate campuses and connections between different schools, both of which are considered part of a WAN. We seek comment on the proposed addition of the term campus to the ESL. We also seek comment on whether the ESL should provide the same clarity with respect to buildings that are part of the same library branch. If so, we invite commenters to recommend specific language for the ESL that would be helpful for the library community.
- Last year, the Bureau adopted several changes to the ESL to implement the new rules adopted by the Commission in the *Second E-rate Modernization Order* to expand the options available for purchasing affordable high-speed connectivity.⁶ These changes included new explanatory notes identifying Leased Lit Fiber, Dark Fiber, and Self-Provisioned Broadband Networks as eligible services, and explaining the competitive bidding requirements and eligible costs, including special construction, for high-speed broadband networks. We invite commenters to suggest modifications to make the ESL a more useful tool for applicants seeking funds for high-speed broadband networks.⁷

⁴ 47 CFR § 54.500.

⁵ *Id.*

⁶ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923 (WCB 2015).

⁷ We remind commenters that the decisions made by the Commission in the E-rate Modernization Orders are not open for reconsideration here. Petitions for reconsideration are governed by 47 CFR § 1.429 and the time for seeking reconsideration of the E-rate Modernization Orders is long past. See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (*E-rate Modernization Order*); *Second E-rate Modernization Order*.

Pursuant to section 1.419 of the Commission's rules,⁸ interested parties may file comments on or before **July 5, 2016** and reply comments on or before **July 20, 2016**. All comments are to reference **WC Docket No. 13-184** and may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

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.

In addition, we request that one copy of each pleading be sent to each of the following:

- (1) Charles Eberle, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 6-A365, Washington, DC 20554; e-mail: Charles.Eberle@fcc.gov;
- (2) Cara Voth, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-B530, Washington, DC 20554; e-mail: Cara.Voth@fcc.gov;
- (3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-B521, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov.

People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS.⁹ These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁰ 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).

⁸ 47 CFR § 1.419.

⁹ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

¹⁰ 47 CFR §§ 1.1200 *et seq.*

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.

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

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ATTACHMENT

Schools and Libraries Universal Service Support Mechanism – Eligible Services List

(WC Docket No. 13-184)

The Federal Communications Commission's (FCC's) rules provide that all services that are eligible to receive discounts under the Schools and Libraries Universal Service Support Mechanism (otherwise known as the E-rate program or E-rate) are listed in this Eligible Services List (ESL). The E-rate program is administered by the Universal Service Administrative Company (USAC). Eligible schools and libraries may seek E-rate support for eligible Category One telecommunications services, telecommunications, and Internet access and Category Two internal connections, basic maintenance, and managed internal broadband services as identified herein. 47 CFR §§ 54.5, 54.500, and 54.502(a).

Additional guidance from USAC about the E-rate application process and about eligible services, including a glossary of terms, is available at USAC's website at <http://www.usac.org/sl/>. The documents on USAC's website are not incorporated by reference into the ESL and do not bind the Commission. Thus, they will not be used to determine whether a service or product is eligible. Applicants and service providers are free to refer to those documents, but just for informal guidance. This ESL applies to funding requests for Funding Year 2017.

Category One

The first category of supported services, Category One, includes the services needed to support broadband connectivity to schools and libraries. Eligible Category One services are listed in the entries for data transmission services and Internet access and voice services. This category consists of the services that provide broadband to eligible locations including data links that connect multiple points, services used to connect eligible locations to the Internet, and services that provide basic conduit access to the Internet. With the exception of leased dark fiber and self-provisioned broadband networks, maintenance and technical support appropriate to maintain reliable operation are only eligible for support when provided as a component of these services. Voice services, as described below, are subject to a phase down of support that began in Funding Year (FY) 2015.

Data transmission services and Internet access

Digital transmission services and Internet access are eligible in Category One. These services include:

- Asynchronous Transfer Mode (ATM)
- Broadband over Power Lines
- Cable Modem
- Digital Subscriber Line (DSL)
- DS-1 (T-1), DS-3 (T-3), and Fractional T-1 or T-3
- Ethernet
- Integrated Services Digital Network (ISDN)
- Leased Lit Fiber
- Leased Dark Fiber (including dark fiber indefeasible rights (IRUs) for a set term)
- Self-Provisioned Broadband Network
- Frame Relay
- Multi-Protocol Label Switching (MPLS)
- OC-1, OC-3, OC-12, OC-n
- Satellite Service
- Switched Multimegabit Data Service
- Telephone dial-up
- Wireless services (e.g., microwave)

Notes: (1) E-rate support is available for leased lit fiber, leased dark fiber, and self-provisioned broadband networks as described in the *Second E-rate Modernization Order* (FCC 14-189). Eligible costs include monthly charges, special construction, installation and activation charges, modulating electronics and other equipment necessary to make a Category One broadband service functional (“Network Equipment”), and maintenance and operation charges. Network Equipment and maintenance and operation costs for existing networks are eligible. All equipment and services, including maintenance and operation, must be competitively bid.

(2) Applicants that seek bids for leased dark fiber or self-provisioned broadband networks must also seek bids for leased lit fiber service and fully consider all responsive bids.

(3) Applicants may seek special construction funding for the upfront, non-recurring costs for the deployment of new or upgraded facilities. The eligible components of special construction are construction of network facilities, design and engineering, and project management.

(4) Staff salaries and labor costs for personnel of the applicant or underlying beneficiary are not E-rate eligible.

Eligible voice services.

Eligible voice services are subject to an annual 20 percentage point phase down of E-rate support that began in FY 2015, as described in the *E-rate Modernization Order*. For FY 2017, the effective discount rate will be 60 percentage points less than other Category One services. The reduced discount rate for voice services will apply to all applicants and all costs for the provision of telephone services and circuit capacity dedicated to providing voice services including:

- Centrex
- Integrated Services Digital Network (ISDN)
- Interconnected voice over Internet protocol (VoIP)
- Local, long distance, and 800 (toll-free) service
- Plain old telephone service (POTS)
- Radio loop
- Satellite telephone service
- Shared telephone service (only the portion of the shared services relating to the eligible use and location may receive discounts)
- Wireless telephone service including cellular voice and excluding data and text messaging

Category Two

The second category of equipment and services eligible for E-rate support, Category Two, includes the internal connections needed for broadband connectivity within schools and libraries. Support is limited to the internal connections necessary to bring broadband into, and provide it throughout, schools and libraries. These are broadband connections used for educational purposes within, between, or among instructional buildings that comprise a school campus (as defined on p. 7 of the ESL) or library branch, and basic maintenance of these connections, as well as services that manage and operate owned or leased broadband internal connections (e.g., managed internal broadband services or managed Wi-Fi). Category Two support is subject to per-school or per-library budgets as set forth in the *E-rate Modernization Order* and *Second E-rate Modernization Order*. The eligible components and services in Category Two are:

Eligible Broadband Internal Connections

- Access points used in a local area network (LAN) or wireless local area network (WLAN) environment (such as wireless access points)
- Antennas, cabling, connectors, and related components used for internal broadband connections
- Caching
- Firewall services and components separate from basic firewall protection provided as a standard component of a vendor's Internet access service.
- Switches
- Routers
- Racks
- Uninterruptible Power Supply (UPS)/Battery Backup
- Wireless controller systems
- Software supporting the components on this list used to distribute high-speed broadband throughout school buildings and libraries

Notes: (1) Functionalities listed above that can be virtualized in the cloud, and equipment that combines eligible functionalities, like routing and switching, are also eligible.

(2) A manufacturer's multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component.

(3) Caching is defined as a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if transmitted across a network from a distance. A caching service or equipment that provides caching, including servers necessary for the provision of caching, is eligible for funding.

Eligible Managed Internal Broadband Services

- Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections are eligible managed internal broadband services (e.g., managed Wi-Fi).
- E-rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries. Eligible expenses include the management and operation of the LAN/WLAN, including installation, activation and initial configuration of eligible components, and on-site training on the use of eligible equipment.
- In some eligible managed services models, the third party manager owns and installs the equipment and school and library applicants lease the equipment as part of the managed services contract. In other cases, the school or library may own the equipment, but have a third party manage it for them.

Basic Maintenance of Eligible Broadband Internal Connections

E-rate support is available for basic maintenance and technical support appropriate to maintain reliable operation when provided for eligible broadband internal connections.

The following basic maintenance services are eligible:

- Repair and upkeep of eligible hardware
- Wire and cable maintenance
- Configuration changes
- Basic technical support including online and telephone based technical support
- Software upgrades and patches including bug fixes and security patches

Eligibility limitations for Category Two:

Eligibility limitations for managed internal broadband services - The equipment eligible for support as part of a managed internal broadband service may include only equipment listed as a broadband internal connections component above. Upfront charges that are part of a managed service contract are eligible for E-rate support except to the extent that the upfront charges are for any ineligible internal connections (e.g., servers other than those that are necessary to provide caching) which, if included in the contract, must be cost allocated out of any funding request.

Eligibility limitations for basic maintenance – Basic maintenance is eligible for support only if it is a component of a maintenance agreement or contract for eligible broadband internal connections. The agreement or contract must specifically identify the eligible internal connections covered, including product name, model number, and location. Support for basic maintenance will be paid for the actual work performed under the agreement or contract. Support for bug fixes, security patches, and technical support is not subject to this limitation. Basic maintenance does not include:

- Services that maintain ineligible equipment
- Upfront estimates that cover the full cost of every piece of eligible equipment
- Services that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment’s ability to transport information
- Network management services, including 24-hour network monitoring
- On-site technical support (i.e., contractor duty station at the applicant site) unless applicants present sufficient evidence of cost-effectiveness
- Unbundled warranties

Eligibility explanations for certain Category One and Category Two services:

Internet access – Eligible Internet access may include features such as basic firewall protection, domain name service, and dynamic host configuration when these features are provided as a standard component of a vendor’s Internet access service. Firewall protection that is provided by a vendor other than the Internet access provider or priced out separately will be considered a Category Two internal connections component. Examples of items that are ineligible components of Internet access include applications, content, e-mail, and end-user devices and equipment such as computers, laptops, and tablets.

Wireless services and wireless Internet access – As clarified in the *Second E-rate Modernization Order*, data plans and air cards for mobile devices are eligible only in instances when the school or library seeking support demonstrates that the individual data plans are the most cost-effective option for providing internal broadband access for mobile devices at schools and libraries. Applicants should compare the cost of data plans or air cards for mobile devices to the total cost of all components necessary to deliver connectivity to the end user device, including the cost of Internet access and data transmission service to the school or library. Seeking support for data plans or air cards for mobile devices for use in a school or library with an existing broadband connection and wireless local area network implicates the E-rate program’s prohibition on requests for duplicative services.

Off-campus use, even if used for an educational purpose, is ineligible for support and must be cost allocated out of any funding request.

Managed internal broadband services, such as managed Wi-Fi, are eligible only for Category Two support.

Connections between buildings of a single school – The classification of connections between multiple buildings of a single school is determined by whether the buildings are located on the same campus. A “campus” is defined as the geographically contiguous grounds where the instructional buildings of a single eligible school are located. A single school may have multiple campuses if it has instructional buildings located on grounds that are not geographically contiguous. Different schools located on the same grounds do not comprise a single campus. The portion of the grounds occupied by the instructional buildings for each school is a campus for that school.

- Connections between buildings on different campuses of a single school are considered to be Category One digital transmission services.
- Connections between different schools with campuses located on the same property (e.g., an elementary school and middle school located on the same property) are considered to be Category One digital transmission services.
- Connections between buildings of a single school on the same campus are considered to be Category Two internal connections.

Miscellaneous

As described below, various miscellaneous services associated with Category One or Category Two are eligible for support. Applicants should request eligible miscellaneous services in the same category as the associated service being obtained or installed.

Fees

Fees and charges that are a necessary component of an eligible product or service are eligible including:

- Change fees
- Contingency fees are eligible if they are reasonable and a regular business practice of the service provider. Contingency fees will be reimbursed only if the work is performed.
- Freight assurance fees
- Lease or rental fees on eligible equipment
- Per diem and/or travel time costs are eligible only if a contract with a vendor for the eligible product or services specifically provides for these costs
- Shipping charges
- Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. This includes customer charges for universal service fees, but does not include additional charges for universal service administration.

Installation, activation, and initial configuration

Installation, activation, and initial configuration of eligible components are eligible. These services may include:

- Design and engineering costs if these services are provided as an integral component of the installation of the relevant services
- Project management costs if these services are provided as an integral component of the installation of the relevant services
- On-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and is part of the contract or agreement for the equipment. Training must occur coincidentally or within a reasonable time after installation.