



Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
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Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)
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**INITIAL COMMENTS ON THE FY 2009 DRAFT ELIGIBLE SERVICES LIST
FOR SCHOOLS AND LIBRARIES
UNIVERSAL SERVICE MECHANISM
(FCC 08-180)**

The State E-rate Coordinators' Alliance (SECA) submits these Comments in accordance with the FCC's Public Notice released July 31, 2008 (designated FCC 08-180) seeking comment on USAC's proposed Eligible Services List ("ESL") for Funding Year 2009.

SECA operates without any staff, and accomplishes its work through the resources of its 90 individual members who provide statewide E-rate coordination activities in

40 states and 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 and serves 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 provider. 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.

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.

Definition of “Basic Telephone Service”

One of the major changes incorporated in the ESL for FY 2008 was the treatment of Centrex service as a basic telephone service thereby eliminating the requirement that applicants file a technology plan for Centrex service. SECA strongly endorsed this change and will support a further broadening of the definition of basic telephone service as proposed in the FCC’s current NPRM.

At a minimum, SECA believes that all local and long distance services accessing the Public Switched Telephone Network (“PSTN”) should be considered “basic telephone service.” As a matter of technology neutrality, this should include telephone service provided through any multi-line telephone system — Centrex, PBX, or key system. The FCC’s inclusion of this issue in its NPRM on E-rate eligible service does not preclude the Commission from adopting this position at this time, pending the outcome of the NPRM. The FCC can endorse the “basic” nature of any multi-line local or long distance service simply by clarifying the language in the FY 2008 ESL (and the same language in the draft FY 2009 ESL).

Specifically, the FY 2008 ESL defines “Telephone Service” as any communications using the public switched telephone network. It then provides a list of such PSTN

services, indicating they "...are 'basic' for purposes of the [E-rate] program and do not require a technology plan." The list includes:

- 800 service
- Centrex
- Local phone service
- Long distance telephone service
- POTS
- Wireless telephone service (cellular and PCS)
- Voice mail services

In support of this position, SECA makes the following recommendations with respect to the final Eligible Services List for FY 2009:

1. The FCC should clearly confirm that both Centrex and other multi-line PSTN access services are defined as "basic telephone services" and do not require technology plans.
2. Given that local and long distance services are already defined as "basic," the multi-line clarification should be effective as of FY 2008, the same year in which Centrex was specifically designated a basic telephone service.
3. Assuming that the basic telephone service definition is to be applied to PSTN access through a PBX or key system, references to PRIs and trunk lines should be added to the list in the Telephone Service entry.
4. For the purposes of consistency and technical neutrality, the FCC should consider designating PBX and key systems as "basic" telephone equipment for which installation and maintenance would not require technology plans. This recommendation is not meant to suggest, as discussed in the current NPRM, that basic telephone equipment be designated Priority 1.

Eligibility of Internet2

As currently written, both the existing FY 2008 ESL and the draft FY 2009 ESL make a distinction between telecommunications services used to provide access to

Internet2 and the Internet2 access service itself. The former is deemed eligible, but all or part of the latter is deemed ineligible.

The “all or part of” confusion stems from two separate Internet2 entries in the draft ESL. The final portion of the Telecommunications Services section states that Internet2 membership dues are ineligible, whereas the final portion of Internet Access section states that Internet2 fees — which USAC takes to mean any Internet2 service fees other than telecom circuit charges — are ineligible.

As we understand it, the basis for USAC’s position is that “To qualify as Internet access, all services must reach the boundary of public Internet space.” Under its definition, USAC apparently considers Internet2 as little more than a large intranet, hence ineligible. SECA believes that this is an out-dated definition. While Internet2 is admittedly unavailable to every Internet user, within the K-20 educational community it is an increasingly “public Internet space” of its own. Given the E-rate’s goal of providing broad Internet access for educational purposes, it appears counter-intuitive to define Internet2 as ineligible service for schools and libraries.

Clarification of Web Hosting Eligibility

SECA supports the new proposed language which defines intranet web hosting as ineligible. This clarification will remove an ambiguity, that has caused confusion

among applicants and vendors, and concern over inconsistency in administering the program, that has existed for several years. We also believe the cost allocation methodology for the ineligible features of web hosting should be specifically defined and made publicly available to both applicants and service providers before the FY 2009 E-rate funding window opens. Without requiring vendors to share this information, applicants are forced to rely on the word of vendors (without any supporting documentation or independent examination) concerning the eligibility of their products and services. After all, it is the applicant, and not the vendor, that must pass PIA review and establish that each funding request complies with program rules.

In determining this cost allocation, SECA recommends examining the total cost of each service offering and use a cost allocation based on the price of the eligible and ineligible features. The cost of the eligible basic web hosting feature would be eligible as long as it was a reasonable cost.

SECA does not believe, as some has suggested, that web hosting cost allocation should be based on a percentage of the number of ineligible features divided by the total number of features , or based on the number of users for each eligible/ineligible feature. For example, if a web hosting package included basic web hosting and content editing features, the cost allocation should not be 50%. Rather, a fairer cost allocation would take into account the actual price of each feature. It has been our

experience that some web hosting companies have marketed service packages to applicants where the ineligible features are priced extremely low, yet the cost of the basic web hosting service is very high, resulting in a 90-95% eligibility rate which we believe is entirely unrealistic.

We urge the Commission to remove any further ambiguity regarding cost allocation and require USAC to publish a clearly defined, reasonable, cost allocation methodology.

Other Eligibility Issues

Several ESL entries — and existing USAC funding decisions — appear to be based on interpretations of FCC eligibility rules that we believe deserve further clarification in order to remove any ambiguity or misunderstanding. These issues are not new eligibility categories or entries – such as the matters under consideration in the recently initiated Eligible Services NPRM. Rather, these issues arise from existing entries (and explanations) on the ESL.

User Training

As in the current ESL, on-site training is deemed eligible “...as a part of installation services but only if it is basic instruction on the use of eligible equipment...” As interpreted by USAC, only technical training of personnel charged with the

operation or maintenance of eligible equipment, not of actual end users of the eligible equipment, is considered eligible.

FCC appeal guidance (Henkels & McCoy decision, DA 06-1463), however, suggests a broader definition of eligibility that would include end-user training as long as it is not geared towards use “...in teachers' programs of instruction or for professional development.” If basic end-user training in the use of an eligible system — as opposed to staff development activities — is eligible, additional clarifying language is needed. We suggest that the applicable paragraph in the Miscellaneous section be modified to begin: “In addition, on-site training of users and network administrators is eligible....”

Two-in-Five Rule Issues

When the FCC initially established the Two-in-Five Rule (Rule) in the Third Report and Order, it recognized Internal Connections Maintenance as a necessary recurring service and excluded it from the Rule. It has subsequently become apparent that certain other eligible, but recurring, services of a similar nature are inadvertently impacted by the Two-in-Five Rule. By slightly expanding the definition of “basic maintenance” in the ESL, the FCC may be able to correct some of the adverse effects of the Rule.

Software client access licenses often required to be purchased on an annual basis, for example, are eligible as Internal Connections. But, as explicitly addressed in

the proposed ESL, such licenses are not currently eligible as Basic Maintenance. As such, client access licenses, while required every year, are only eligible for support in two of every five years. SECA believes that restriction is an unintended consequence of the Two-in-Five Rule. This oversight can be rectified simply by recognizing that client access licenses are necessary to the “upkeep of eligible equipment” and, thereby, can be logically considered an eligible component of Basic Maintenance.

Equipment Warranties

Equipment warranties, which fall under the category of Basic Maintenance of Internal Connections, are typically purchased in yearly (or two or three-year) increments upon equipment installation or upon expiration of previous warranties. As such, there is little likelihood that commercially standard warranty periods will coincide with the E-rate funding year. Unfortunately, the introduction to the Basic Maintenance section notes: “All requests in this category are for services to be delivered within the July 1 to June 30 Funding Year.” As a result, an allocated portion — and sometimes a significant portion — of annual warranty costs are deemed ineligible.

Additionally, since these types of warranties are typically associated with individual pieces of equipment, an applicant may have many such warranties. If each warranty is treated as a single contract, the applicant must then apply for — and allocate — each warranty as a separate FRN.

SECA recommends that:

1. A standard one- to three-year warranty purchased in connection with new equipment should be treated as an eligible portion of the equipment purchase, rather than as basic maintenance. Given the low cost of even a three-year warranty, relative to the underlying equipment cost, applicants should not be required to apply for an allocated portion of a standard multi-year warranty in subsequent funding years.
2. A warranty extension associated with a specific piece of equipment should be treated as a non-recurring basic maintenance expense, beginning, but not necessarily ending, within the associated funding year. On an ongoing basis, this would permit an applicant to receive full discounts of its equipment warranties and to file for those discounts under one FRN.

Other ESL Suggestions

The following are a number of more minor clarifications which SECA believes should be reflected in the final Eligible Services List for FY 2009:

1. As a proposed addition to the FY 2009 ESL, “Video On Demand” servers are deemed categorically ineligible. The Glossary’s definition of “Video On Demand (VOD) Server” suggests that the ineligible aspect of such servers is the storage and retrieval of videos — functions which have always been ineligible. Many VOD servers, however, provide video distribution capabilities that should continue to be eligible on an allocated basis. SECA recommends that VOD servers be listed in the Internal Connections section as a part of the list of servers that “...are eligible only in certain cases.” The following language is suggested:

Video on Demand server – Eligible only to the extent used to distribute video to individual classrooms or public areas, but not eligible as used for video storage and retrieval.

2. An eligibility criterion in the Basic Maintenance section indicates that: “the agreement or contract must specifically identify the eligible components covered including product name, model number, and location.” Although such information is often required during PIA application review, SECA believes that such a list of equipment should not be a mandated contract requirement. Particularly for larger applicants, the base of equipment that must be maintained is dynamic, changes to which would require constant contract modifications. Instead, we recommend that the ESL simply indicate that applicants should be prepared to provide a list of equipment to be maintained under the associated agreement or contract.

Respectfully Submitted by:

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August 14, 2008