



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
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## WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PROPOSED ELIGIBLE SERVICES LIST FOR THE E-RATE PROGRAM

WC Docket No. 13-184

**Comment Date: June 22, 2015**

**Reply Comment Date: July 6, 2015**

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 2016.<sup>1</sup> 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 using the ESLs for recent funding years. Below, we identify the more significant changes between the funding year 2015 ESL and the proposed funding year 2016 ESL, and seek comment on whether we should adopt or modify those changes.<sup>2</sup>

- In the *Second E-rate Modernization Order*, the Commission expanded the options available for purchasing affordable high-speed connectivity by equalizing the treatment of lit and dark fiber and allowing applicants to self-provision high-speed broadband networks if the applicant is able to demonstrate that self-provisioning is the most cost-effective option and is able to satisfy certain other conditions.<sup>3</sup> The proposed ESL reflects the changes in eligibility for dark fiber, and adds explanatory "notes" regarding leased lit and dark fiber and self-provisioned broadband networks in the "Digital transmission and Internet access" entry of the Category One section. The notes explain that applicants must seek competitive bids for network maintenance and operation, and all other eligible services and equipment, in order to receive E-rate support. The

<sup>1</sup> See 47 C.F.R. § 54.502 (detailing the procedures for seeking comment on a draft ESL for the E-rate program for the upcoming funding year); Attachment, Draft Schools and Libraries Eligible Services List for Funding Year 2016.

<sup>2</sup> Petitions for reconsideration of the Commission's Second E-rate Modernization Order are pending before the Commission, but we do not invite requests for reconsideration of the E-rate Modernization Orders as part of this notice seeking comment on the proposed funding year 2016 ESL. See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (*E-rate Modernization Order*); *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 (2014) (*Second E-rate Modernization Order*).

<sup>3</sup> *Second E-rate Modernization Order*, 29 FCC Rcd at 15549, paras. 30-54.

proposed ESL also adds a description of eligible special construction or installation charges for Category One services. We seek comment on these proposed revisions.

- The proposed ESL adds equipment necessary to make a broadband service functional to the list of eligible costs for leased lit fiber, dark fiber, and self-provisioned broadband networks. This clarification is necessary to fully equalize the treatment of lit and dark fiber and to support self-provisioned broadband networks.<sup>4</sup> We seek comment on this proposed clarification.
- In the *Second E-rate Modernization Order*, the Commission clarified its cost allocation requirements for circuits that carry both voice and data services.<sup>5</sup> The full cost of circuits dedicated solely to voice service, including PRIs, SIP trunks, and VoIP provider circuits are subject to the voice services phase down, while the costs for bundled voice and data services provided over a single circuit, must be cost allocated.<sup>6</sup> Because Integrated Services Digital Network (ISDN) is typically provisioned as a voice service, and the Bureau has referred to ISDN synonymously with PRI circuits in the ESL,<sup>7</sup> the proposed ESL adds ISDN to the list of eligible voice services. However, for applicants that may be receiving ISDN as bundled voice and data service, ISDN also remains listed in the ESL as an eligible digital transmission service so that a cost allocation can be sought for the data portion of the service that is not subject to the voice phase down. We seek comment on this proposed clarification.
- In the *Sixth Report and Order*, the Commission decided that basic firewall protection that is included as part of an Internet access service would continue to be an eligible feature of Internet access service.<sup>8</sup> The Bureau subsequently clarified that firewall components separate from basic firewall protection provided as a standard component of Internet access service are eligible internal connections.<sup>9</sup> The proposed ESL clarifies the eligibility of firewall services and components consistent with this precedent. We seek comment on these proposed clarifications.
- Last year, the Bureau restructured the ESL into Category One and Category Two services as directed in the *E-rate Modernization Order*.<sup>10</sup> The Bureau also streamlined the list of supported services in the ESL to better tailor support towards high-capacity broadband and eliminated or phased down support for services that do not provide broadband. We seek comment on applicants' and other stakeholders' experience with the new ESL during FY 2015 application process and invite commenters to suggest other

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<sup>4</sup> See *Second E-rate Modernization Order*, 29 FCC Rcd at 15552, para. 35 (citing *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16738, para. 131 (2012)).

<sup>5</sup> *Id.* at 15602, para. 162.

<sup>6</sup> *Id.*

<sup>7</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 14583, App. B – Eligible Services List (Wireline Comp. Bur. 2013) (explaining that ISDN is synonymous with BRI and PRI).

<sup>8</sup> See *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, 18808-18809, para. 105 (2010) (*Sixth Report and Order*).

<sup>9</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 13280, 13284, para. 14 (Wireline Comp. Bur. 2011).

<sup>10</sup> See *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6 et al., Order, 29 FCC Rcd 13404 (Wireline Comp. Bur. 2014).

changes to the organization of the ESL to make it a more useful tool during the E-rate application process.

Pursuant to sections 1.415 and 1.419 of the Commission's rules,<sup>11</sup> interested parties may file comments on or before **June 22, 2015** and reply comments on or before **July 6, 2015**. 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://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.

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 12<sup>th</sup> 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 12<sup>th</sup> 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](mailto: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](mailto: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](mailto: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](mailto: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.<sup>12</sup> 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 12<sup>th</sup> 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.

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<sup>11</sup> 47 C.F.R. §§ 1.415, 1.419.

<sup>12</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>13</sup> 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.

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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<sup>13</sup> 47 C.F.R. §§ 1.1200 *et seq.*

## ATTACHMENT

### **Schools and Libraries Universal Service Support Mechanism – Eligible Services List (DRAFT)**

(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 C.F.R. §§ 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, dated [[Month XX, 2015]], implements changes adopted in the *E-rate Modernization Order* (FCC 14-99) and in the *Second E-rate Modernization Order* (FCC 14-189), and therefore represents a change from prior funding years. This ESL applies to funding requests for Funding Year 2016.

## **Category One**

The first category of supported services, Category One, includes the services needed to support broadband connectivity to schools and libraries. Category One lists the telecommunications services, telecommunications, and Internet access for which E-rate applicants may seek discounts. Eligible Category One services are listed in the entries for digital 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. Maintenance and technical support appropriate to maintain reliable operation are eligible for support when provided as a component of these services. Voice services, as described below, are subject to a phase down of support beginning in Funding Year (FY) 2015.

### **Digital 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
- Dark Fiber
- Self-Provisioned Broadband Networks
- 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, 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, modulating electronics, equipment necessary to make a broadband service functional, and maintenance and operation charges. All equipment and services, including maintenance and operation, must be competitively bid.

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

(3) 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 beginning in FY 2015, as described in the *E-rate Modernization Order*. For FY 2016, the effective reduced discount rate will be 40 percentage points. 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

**Eligibility explanations for certain Category One 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, 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 digital 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 request 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.



## **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 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. 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

## 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.

<b>Fees</b>
Fees and charges that are a necessary component of an eligible product or service are eligible including: <ul style="list-style-type: none"><li>• Change fees</li><li>• 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.</li><li>• Freight assurance fees</li><li>• Lease or rental fees on eligible equipment</li><li>• 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</li><li>• Shipping charges</li><li>• 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.</li></ul>
<b>Installation, activation, and initial configuration</b>
Installation, activation, and initial configuration of eligible components are eligible. These services may include: <ul style="list-style-type: none"><li>• Design and engineering costs if these services are provided as an integral component of the installation of the relevant services</li><li>• Project management costs if these services are provided as an integral component of the installation of the relevant services</li><li>• 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.</li></ul>