

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)
)
Modernizing the E-rate Program) WC Docket No. 13-184
For Schools and Libraries)
)

**REPLY COMMENTS OF FUNDS FOR LEARNING, LLC
on the
PROPOSED ELIGIBLE SERVICES LIST
FOR THE E-RATE PROGRAM FUNDING YEAR 2019 (DA 18-789)**

Funds for Learning, LLC, (“FFL”) submits these Reply Comments in response to the FCC Wireline Competition Bureau’s Public Notice released July 30, 2018 (DA 18-789) regarding the E-rate Eligible Services List (“ESL”) for funding year 2019 and the Comments submitted by SECA¹.

I. Category 1 Needed Clarifications

In response to SECA’s comments, and as described in more detail below, FFL suggests that the FCC adopt the following “bright line” standard for Category 1 Network Equipment:

An applicant may request Category 1 discounts for the purchase or lease of network electronics and related components necessary for the transmission of data across public right of way.

This unambiguous standard makes clear the circumstance under which such equipment would be eligible and avoids the unnecessary complexity of defining the multitude of scenarios, technologies and service agreement types that could possibly be involved, either now, or in the future.

¹ Comments of the State E-rate Coordinators’ Alliance, WC Docket 13-184, filed August 29, 2018 (“SECA”).

Purchase of Category 1 Network Equipment for Leased Lit Fiber Solutions

We agree with SECA's request that the FCC clarify the circumstances under which data networking equipment and related components qualify for support under Category 1 discounts. In FY2018, there were 126 applicants that requested support for Category 1 hardware purchases, totaling \$22.4 million². As explained by SECA, there are circumstances in which the purchase of Wide Area Network electronics may be necessary for a broadband network to function. Clarity regarding the eligibility of this equipment would be beneficial to all parties.

FFL will go a step beyond the clarification request to state that the FCC should allow all C1 network electronics to qualify for discounts, regardless of the network technology or service agreement type. We believe there are additional opportunities for applicants to request hardware under the Category 1 designation and that those circumstances could lead to faster, more cost-effective networks with lower on-going costs, benefiting both the applicants and the Universal Service Fund. As with all E-rate supported purchases, the function and necessity of the equipment should be the driving force behind its eligibility. The administrative classification assigned to a piece of hardware or contract should not determine its eligibility.

Leased End to End Lit Fiber Solutions including On-Premise Equipment Leased from Service Provider

We agree with SECA's request that the FCC clarify the eligibility of Leased On-Premise Equipment. As with our comments regarding the purchase of C1 networking equipment, we further request that the FCC allow for discounts on these types of equipment transactions. The lease (or purchase) of network electronics that are necessary for the proper functioning of a connection between two facilities across public right of way should be eligible under the Category 1 designation.

II. Category 2 Needed Clarifications

SECA raises an important point about the use of "bucket" or "sub-category" designations as a determining factor in USAC's application review and funding commitment decision process. These types of classifications should *never be allowed* to create the sorts of systemic hurdles that now plague the funding and payment process. Applicants should not be penalized and/or forced to appeal any sort of dropdown

² Source: E-rate Manager® (July 3, 2018)

selections. These options exist, in theory, to facilitate the application review, not to serve as administrative gotchas.

The most notable and recent example of this trend is the Category 1 Form 470 drop down menu guidance which the FCC essentially waived for funding year 2018³. The FCC rightly recognized that what matters most is that applicants seek discounts for services that align with their original procurement while complying with state and local competitive bidding rules. The dropdown descriptions themselves are just that: descriptive, not determinative.

Therefore, FFL urges the FCC to make clear in the final ESL that categories and sub-categories of all goods and services are provided for general descriptive purposes. In every case, eligibility for discounts should be based on the use and location of a good or service, not a dropdown box selection. To the extent that dropdown menus may expedite application review, they should be allowed and encouraged, but they should not be used to penalize applicants and there should always be the option to provide an “other” description.

III. Category 2 Subcategory Simplification/Reform Needed

FFL agrees with SECA’s recommendation that Category Two services be consolidated into a single list.

Starting with the Funding Year 2013 Eligible Services list, the Commission consolidated Priority One services into a single list. In the *Order* accompanying the FY2013 ESL, the Commission stated the following⁴:

The goal of the proposed reorganization was to group Priority One services by categories reflecting how school and library applicants plan for and seek technology and services, in order to make the ESL a more user-friendly tool for the E-rate community.

...

When applying for discounts, E-rate applicants are focused on the services they need for their schools and libraries, and may be unfamiliar with the regulatory framework for telecommunications services and Internet access established by Commission rulemakings.

³ See <https://www.fundsforlearning.com/news/2018/05/fcc-addresses-bidding-rules-concerns>

⁴ DA 12-1553, paragraphs 4-5

Moreover, many of the services purchased by schools and libraries using E-rate funding can fall into more than one of the regulatory classifications. While these regulatory distinctions remain, moving the several types of Priority One services into one list on the ESL reflects the marketplace understanding that specific telecommunications services and Internet services may be used interchangeably to meet communications needs.

The change was largely supported⁵ in the comments to the FY2013 draft ESL, and in practice, we agree that the consolidation has reduced complexity and eliminated “gotchas” in the application process with respect to the categories of service specified on FCC Forms 470 and 471.

The time has come to consolidate the Category Two section of the Eligible Services List as well. We propose that doing so can reduce confusion and needless funding denials, increase the efficiency of program administration, and maintain program integrity. We find the following:

- **There is no regulatory prioritization between the three categories of Category Two services.** The program does not prioritize Internal Connections, Basic Maintenance of Internal Connections, or Managed Internal Broadband services over the other two categories. All services are funded under the same pre-discount Category Two budget, and suspension of the “two in five” rule starting in Funding Year 2015 means that Category Two services of all types can be funded in every Funding Year (assuming the applicant has available C2 budget funds.)
- **Category Two funding category distinctions are causing unnecessary clerical errors and funding denials.** Our observation has been that applicants tend to find the separation of Category Two services into three “sub-categories” confusing (especially considering that no comparable designation exists in the Category One section of the ESL), and this leads to mistakes when filing the FCC Form 470. Case in point: USAC has recently retroactively denied a number of Category Two funding requests due to mis-matches between the category of service specified on the Form 470 and requested on the Form 471. We believe that the segmentation only leads to opportunities for applicants to inadvertently “check the wrong box” on an otherwise descriptive Form 470, leading to needless procedural funding denials.

⁵ <https://www.fundsforlearning.com/blog/2012/08/seca-posts-draft-esl-reply-comments>

- **The Commission’s 2012 assertion that “many of the services purchased by schools and libraries using E-rate funding can fall into more than one of the regulatory classifications” is true for Category Two services as well.** This is especially true of C2 professional services like Basic Maintenance and Managed Internal Broadband Services. Many professional service agreements have (often inseparable) elements of both types of service. For example, an applicant may have a single agreement with a service provider to both manage and monitor equipment it owns (MIBS) but also repair it in the event of a failure (BMIC.) Both functions are eligible for C2 discounts, but it can be difficult to ascertain what portion of a contract should be allocated to each category of service. The same is true of an equipment purchase that is accompanied by an ongoing maintenance and support service – both can be eligible for funds, but only if all the proper “boxes are checked” in the application process.

Taken together, we find that segmenting Category Two services into three “sub-categories” creates confusion among E-rate program participants but serves no practical purpose for ensuring program integrity or reducing waste, fraud, or abuse. As such, we encourage the Commission to treat Category Two services in the same manner as it has Category One services since Funding Year 2013: as a single funding category comprised of all eligible Category Two functionality.

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Thank you for the opportunity to submit this Reply Comments.

Respectfully submitted,

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