

I. BASIC MAINTENANCE OF INTERNAL CONNECTIONS

We agree with the Commission that E-rate applicants should be permitted to cost-allocate maintenance and technical support services where a rational division between eligible and ineligible functions can be identified. This is a reasonable approach, and we appreciate the inclusion of this language in the draft ESL for FY 2012. Therefore, FFL supports the updated language that appears in the second paragraph of the introduction to the Basic Maintenance funding category on page 23.

The remainder of the changes and clarifications made to the language in the draft ESL in the Basic Maintenance (“BMIC”) category, however, appear to be intended to conform the ESL to the eligibility guidance that the Commission provided recently in its *Sixth Report and Order* and subsequent *Clarification Order*. While we support efforts to clarify and refine the ESL as a central repository for E-rate eligibility information, what we find troubling in this particular instance are the findings that form the foundation for the Commission’s new BMIC guidance. That is why we urge the Commission to test them, to ask the public to focus and comment on them directly. If the Commission were to do this and, at the same time, to reach out affirmatively to the BMIC vendor community for its input, we believe strongly that the Commission would reach some very different conclusions about whether “pay-as-you-go” maintenance is actually the better, more cost effective way to provide E-rate supported basic maintenance for internal connections hardware.

FFL believes that the existing BMIC eligibility regulations – especially after the guidance published in the *Sixth Report and Order* – significantly reduce the effectiveness and benefit of the E-rate program’s support for critical maintenance services. While the Commission’s desire to be a good steward of E-rate resources by ensuring that funds are only disbursed for “actual work performed” is indeed noble, we believe that its new policy in this regard has instead forged a deep chasm -- with the program’s eligibility regulations on one side and industry standards for the delivery of enterprise-class network maintenance services on the other. This leaves applicants and service providers in the middle, struggling desperately to build a new bridge to satisfy both the needs of applicants for affordable BMIC and the requirements of the E-rate program for cost effectiveness, while at the same time making sure to create and retain all of the documentation necessary to satisfy whatever USAC ultimately decides to demand in that regard.

This void of understanding and departure from industry standards (in all industries – not just the school and library market) has created immense confusion among E-rate stakeholders. When the *Sixth Report and Order* was released, FFL was approached by literally hundreds of E-rate applicants and service providers with questions regarding maintenance services for FY2011, and about what implications the new rules would have on commonly requested services. The subsequent *Clarification Order* provided some guidance for some of the more common inquiries, but also gave way to a whole host of new questions. Overall, we observe that stakeholders generally understand the regulations themselves – what types of service qualify for discounts and

what do not – but the problem, as we see it, is that the structure of the E-rate eligibility rules does not accurately reflect common practice in the marketplace. “Unbundled warranties,” retainer contracts, advanced hardware replacement contracts – it is clear enough that those kinds of contracts for BMIC services are no longer eligible. But in reality, those types of contracts are standard practice, enough so that alternative options can be quite scarce.

It seems obvious to FFL and to many of the stakeholders with whom we speak that the Commission based its new eligibility rules and guidance regarding warranties and retainer contracts on a set of assumptions about the marketplace that was not corroborated by those who actually sell, provide, and buy local area network maintenance services. Because of this, FFL believes that all E-rate stakeholders, USAC and the Commission included, would benefit from additional discussion on the topic of BMIC. Thus, FFL proposes that the Commission open a Notice of Inquiry dedicated to E-rate Basic Maintenance, with the goal of collecting additional data on the true maintenance needs of applicants as well as the availability and cost(s) of industry standard maintenance solutions. Through this process, the eligibility regulations could be updated and refined to provide the same synergy that the other sections of the ESL share with their respective marketplaces.

Among the topics that we believe would benefit from public discourse are the following:

- *Do the current BMIC eligibility regulations enhance or impede applicants’ ability to make cost-effective purchasing decisions for BMIC services?* Without question, extended warranties, advanced hardware replacement contracts, and retainer contracts are very common. But are alternative solutions – such as “pay-as-you-go” work, time and materials (T&M) contracts, or other per-incident maintenance agreements truly more cost-effective?
- *Do the current BMIC eligibility regulations enable applicants to select maintenance services that adequately address their technology goals and objectives?* If fixed-price hardware maintenance agreements are effectively ruled out, do alternative services exist that provide a comparatively robust technical solution? How is network maintenance most commonly delivered, and how does this method compare – in terms of cost and functionality – to alternatives?
- *How does the treatment of BMIC services as “recurring” and the requirement that they be delivered between July 1 and June 30 of the funding year affect applicants?* Because Priority 2 funding requests are generally funded much later in the funding year than Priority 1 services, many applicants are forced into either paying upfront for needed maintenance services (and seeking reimbursement after funding requests are approved) or simply foregoing maintenance services until funds are committed. In Funding Year 2009, approximately 50% of the BMIC funds committed after January 1, 2009 received

no disbursement,¹ resulting in unutilized funding commitments of roughly \$41.7 million. These regulations continue to create significant issues for applicants who cannot afford to proceed with needed maintenance coverage without E-rate funding. Consequently, much of the network equipment that the E-rate program has paid for is not being adequately maintained, and E-rate-supported networks are not functioning as well as they should and could – but for this programmatic glitch. For a more detailed discussion of this issue, please see FFL’s 2011ESL comments.²

- *Do the current BMIC eligibility regulations provide adequate protection against waste, fraud, and abuse?* If E-rate funds are only disbursed for “actual work performed,” what measures are in place to ensure that charges presented for payment are for legitimate work that was performed? Should the program administrator be required to evaluate each claim of “work performed” to ensure that it was indeed necessary and not frivolous? Do the current rules encourage vendors to create a “special class” of maintenance services for E-rate applicants, and can we ensure that these new services are cost-effective?
- *Does the elimination of funding for warranties and prepaid retainers truly affect BMIC demand and disbursements?* Funding Year 2011 BMIC requests totaled just over \$293M, as compared to \$290M in FY2010 and \$278M in FY2009. We presume, then, that many applicants submitted funding requests that represent their estimated hardware maintenance needs in FY2011. We must further presume that most of those applicants believe that those needs will be more or less equivalent to the charges they incurred in years past.
- *How do the current BMIC eligibility regulations affect program administration and operational efficiency?* We have plenty of anecdotal evidence from applicants and service providers that suggests that finding (or offering) time and materials and/or per-use maintenance contracts can be difficult and time-consuming. Do the rules also place undue administrative burden (and therefore costs) on USAC?

We believe that a BMIC Notice of Inquiry would yield valuable information from both applicants and service providers on the topic of BMIC, which the Commission then could use to refine and clarify the BMIC eligibility regulations in a way that alleviates much of the ambiguity and confusion that we currently observe among stakeholders, and enable applicants to maintain their networks in the most cost effective manner possible.

¹ Data downloaded via E-RATE MANAGER[®] from USAC’s E-rate database on July 15, 2011.

² <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015665835> at pp. 9-12.

II. INTRUSION DETECTION AND PREVENTION SHOULD BE ELIGIBLE BECAUSE IT PROVIDES CRITICAL DATA PROTECTION FUNCTIONALITY

We have raised this issue unsuccessfully before,³ but because this is such a badly needed administrative change, we respectfully request that the Commission revisit it. Intrusion protection/intrusion prevention systems are necessary to transport information to classrooms, publicly accessible rooms of a library, and to eligible administrative areas or buildings. Therefore, they are “internal connections.”

Applicants – and the program itself – would benefit from including intrusion detection and prevention systems (“IDS/IPS”) as an eligible service in the data protection category. Indeed, we believe that, under the existing eligibility framework, IDS/IPS functionality is or should be eligible now. IDS/IPS sometimes comes in a standalone box, but most of the time it is a feature of a router or multifunction security appliance that is also, usually, a firewall at its core and eligible as such. IDS/IPS basically makes a firewall “smarter” – instead of just putting up walls and hoping for the best (firewall), it actually keeps guard and watches to see if anything malicious is trying to break into the network.

As broadband services become faster, more sophisticated, and more prevalent, threats to the safety and reliability of networks increase significantly. It is clear that a measure of network security beyond a basic “port blocking” firewall is now critical to ensure minimal service interruptions. As a result, many manufacturers include IDS/IPS functionality as a standard feature of their “basic firewall” products. Further, IDS/IPS is being implemented as a part of the feature set of numerous other network devices, such as routers, switches, and wireless equipment. Consequently, the cost of funding IDS/IPS would be extremely incremental and the benefit of funding it would be extremely high.

If the Commission continues to believe that IDS/IPS systems are not “internal connections,” the need for complicated (and potentially inconsistent) cost-allocations for E-rate funding request will continue to increase, leading to a rise in the complexity and overall administrative overhead of the program. For example, an applicant can purchase a firewall that includes IDS/IPS and may cost-allocate 20% for the IPS/IDS functionality, requesting E-rate discounts on 80% of the purchase price. Another applicant could purchase the exact same firewall, cost allocate IDS/IPS differently, and apply for 75% of the purchase price. . . or less or possibly more. If IDS/IPS were eligible, no cost allocation would be necessary, no cost allocation review would be necessary, and USAC would fund every request quickly, equally and fairly at 100%.

Internal connections include equipment, software and services necessary to bring information to E-rate eligible locations. That is why UPS equipment, for example, which neither

³ <http://fjallfoss.fcc.gov/ecfs/comment/view?id=6015665835> at pp. 6-7

“transports” nor “directs” information on its own is eligible. Without electrical backup, a telecommunications network would not work during a power outage. That is why UPS equipment is necessary to bring information to the classroom. IDS/IPS should be eligible for exactly the same reason. Today, network predators are as great, if not a greater, threat to the continuous operation of a telecommunications network than the vagaries of electric power ever was or will be. A sophisticated attack on a school district’s network can do far more and long-lasting damage to that network’s ability to bring information to the classroom than a temporary power outage. As IDS/IPS protects school and library networks in the same way that UPS equipment does, it follows logically that E-rate discounts should be available for both.

Respectfully submitted,

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