

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

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In the Matter of: )

Schools and Libraries Universal )  
Service Support Mechanism )

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CC Docket No. 02-06  
GN Docket No. 09-51

**COMMENTS ON THE FY 2013 DRAFT ELIGIBLE SERVICES LIST FOR  
SCHOOLS AND LIBRARIES UNIVERSAL SERVICE PROGRAM  
(DA 12-1052, Released July 5, 2012)**

**Comments Submitted by:  
Kellogg & Sovereign® Consulting, LLC**

Kellogg & Sovereign® Consulting, LLC submits these Comments in response to the FCC's Public Notice released July 5, 2012, designated DA 12-1052 seeking comments on USAC's proposed Eligible Services List ("ESL") for Funding Year 2013.

Kellogg & Sovereign is an E-rate management firm that has managed E-rate applications for the previous 15 years. At present our firm assists 250+ applicants in nine states. These applicants range in size from a total of 7 students to applicants with 40,000+ students. Our diverse client base provides us with the ability to see a wide range of schools and libraries and gives us an understanding of their various needs from a broad perspective.

**We submit our comments as follows:**

**Sections on the Eligible Services List ("ESL") should continue to match Program Categories**

Kellogg & Sovereign® Consulting, LLC commends the Commission for the efforts made to streamline the Eligible Service List to make it more useful for applicants who do not have an in-depth knowledge of the E-rate program's many rules and regulations.

However, we do not believe adding another layer of terminology will simplify the use of the Eligible Services List. The rules of the E-rate program are complex and can be difficult to understand by the applicant school or library who understands education or library needs but does not have a background in telecommunications regulations. In the priority one services, applicants have difficulty determining which category a service should go under: Telecommunications, Telecommunications Service, or Internet Access. Additionally, the fact that there are different rules for which type of service provider can provide a particular service adds another layer of complexity. The average applicant may not always know if the bidder that has placed a bid can actually deliver the service according to telecommunications regulations. Many service providers will include Internet Access as a part of the circuit bid while others bid these two services separately. Additionally, many applicants erroneously think that they do not need to request Internet Access because they are only requesting cellular service with data packages and email access. Moving email and web hosting services to "Other Designated and Related Services" adds even more confusion and could result in an increase in unnecessary denials in funding.

**Maintain the layout from the FY2012 ESL and prior years' eligible services lists.**

To promote ease of use, in our opinion, the sections/categories on the eligible services list should match the program rules and the Eligible Services Framework. Therefore, there should continue to be sections on "Telecommunications", "Telecommunications Services", "Internet Access", "Internal Connections" and "Basic Maintenance of Internal Connections."

Although we understand that the Commission's intent was to provide a simpler way for applicants to view the Eligible Services List, moving the categories of service to check boxes is terribly confusing.

It is essential that applicants and service providers be able to clearly reference the eligible services list and associate the items described within the categories as defined by the program rules. To add more descriptive categories " Communications Connectivity" , "Voice Services" and "Other Designated and Related Services" only adds confusion to the applicant or service provider who is trying to understand the document and how the various items listed relate to the Forms 470 and 471 they are required to complete.

If an applicant, for example, is working on their Form 470, they must know if the item they are requesting falls under one of the eligible categories of service. They won't find "Communications Connectivity" or "Voice Services" listed anywhere on the Form 470 or Form 471. In order for the Commission to provide guidance to the user, they will not only have to further explain what they mean by "Service Category" on the eligible

services list, but also update the instructions on the Forms 470 and 471 to reflect the new subsets of “Communications Connectivity” “Voice Services” and “Other Designated and Related Services.”

Based on the information provided by the Commission in the “Background and Overall Requirements” we understand that the Commission’s intent was to combine and reorganize Priority One services to enable the applicant to properly list their items on the Form 470. Many applicants are denied funding due to not marking Internet Access or Telecommunications for services requested because the applicant is unsure at the time they are preparing the Form 470 as to which category the services will ultimately fall under after the competitive bidding period is closed and a particular product or service is selected from a service provider. Therefore, we believe that a more efficient way to attain the Commission’s goals of simplifying the applicants’ role in listing the eligible services they are requesting is to make changes to the Form 470 instead of the Eligible Services List.

**Continue format of ESL from prior years and continue to provide references to program rules.** We strongly recommend that the Commission continue to present the Eligible Services List in the same format as in prior years. By utilizing the format from prior Eligible Services Lists, the Commission can clearly associate eligible products and services within the categories defined by program rules. Furthermore, we believe it is essential to empower the user of the eligible services list by including references to the originating statutes and program rules. Our firm has conducted countless E-rate workshops for both applicants and service providers, and it has been our experience that an informed user will do a better job in completing the forms. If an applicant chooses not to look up the references provided it should be at their option. To remove the references altogether will make the Eligible Services List less transparent to the applicants, service providers, and other stakeholders who must fully understand the products and services that are eligible for E-rate discount. Furthermore, an understanding of the underlying rules is essential as service providers develop new technologies that are eligible based on rule but may not necessarily be specifically detailed in the eligible services list.

**Consolidate categories on the Form 470 especially within Priority One Services.** As recommended by the State E-Rate Coordinators Alliance (“SECA”) in their comments dated July 12, 2012, if the Commission will combine the categories in the Priority One services section (Telecommunications, Telecommunications Services, and Internet Access) on the Form 470 and require that the applicant only need to check “Priority One Services – Telecommunications, Telecommunications Services and Internet Access”, funding denials will be significantly reduced. If the applicant only has to check the Priority One designation on the Form 470, the applicant will no longer need to have

sophisticated knowledge of the regulatory requirements of telecommunications and Internet Access providers. As technology converges in telecommunications and data services, the regulatory bodies must constantly adjust. Services that used to be clearly “telecommunications” or “Internet Access” have converged to the point that regulatory bodies are scrambling to define the new technologies. To burden the school or library applicant with understanding the regulatory nuances when even the regulatory bodies are unsure of the correct answer, places an unreasonable expectation on the school or library who is doing their best to complete the applications. Recent examples include the evolution of text messaging and data services provided by cellular service providers and Voice Over IP services. As technology advances, services will continue to converge and regulations will evolve accordingly. The applicant’s concern should be on whether or not the services requested are eligible for E-rate discount and whether or not the services requested fall under Priority One or Priority Two funding and not whether or not the provider that may be selected is a Form 499 filer.

*As pointed out by SECA in their comments dated July 12, 2012, the Commission could accommodate the requirement to indicate “Priority One level categories” on the Form 470 through review procedures for FY 2013-14 since the Form 470 is already in use for FY2013 filings.*

Since internal connections are subject to the “Two in Five Rule” and basic maintenance of internal connections are considered monthly, recurring services there is a valid argument that these two categories under Priority Two services should continue to be separated on the Form 470. We defer to the Commission as to what would make the most sense regarding the processing of applications and how critical to Commission and USAC staff the Priority Two category designations are in processing applications. We do see maintenance frequently bundled with new services so combining the two categories on the Form 470 may further ease the burden on applicants. However, an argument that the two should be separate due to the different treatment may override the bundled services argument.

#### **Provide Greater Clarity on Regulatory Fees and Surcharges**

Under the Miscellaneous section of the Eligible Services List, Miscellaneous Fees and Charges, the ESL states, “Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. This includes customer charges for universal service administration. “

However, in administration of the program, USAC’s reviewers vary widely on their interpretation of which “taxes, surcharges, and other similar charges” are eligible. Greater clarity from the Commission on what is meant by this statement would be extremely helpful in the administration of the program. We see reviewers, applicants,

and service providers spending an inordinate amount of administrative costs and time in identifying and removing minimal charges on phone bills. It is not unusual for a USAC reviewer to remove a five cent charge throughout a 500 page cell phone bill. For cost savings in administration of the program, it would be helpful if the Commission could define a “de minimis” rule for these types of charges or provide further clarity as to when a surcharge is considered an eligible charge. For example, a paper billing fee or long distance account code is not eligible since both are administrative costs. But when is a surcharge eligible as opposed to a regulatory fee? Is the determination based on regulatory access charges versus pass through of regulatory administration costs? What is the determining factor between an eligible or ineligible surcharge?

### **Other Miscellaneous Components that are NOT eligible**

The Draft FY2013 ESL states on page 26 other miscellaneous components that are not eligible. Should two-way radio services be included in this section? According to the ESL, two way radios are not eligible, but is the service itself eligible for discount? The ESL is silent on this issue.

### **Service Provider Equipment included with service.**

We have seen several instances where USAC reviewers are asking for detail of the equipment installed by the service provider as a part of their telecommunications or Internet Access equipment. Customer Premise Equipment “CPE” is the term commonly used by a telecommunications or Internet Access provider for equipment that they have to install at the customer’s site in order to terminate their services. This can be the plastic box “dmarc” and the terminating equipment at the end of a fiber circuit. It would be helpful if the Commission would define when a service provider would be required to fully detail the equipment they use to terminate the services. Typically this equipment is in a box locked by the service provider with access only by the service provider’s technicians. Additionally, the ESL description would need to clarify that CPE is NOT to be confused with on-premise priority one equipment.

### **Special Eligibility Conditions - Ancillary Use may be fully ineligible and thus 100%**

**denial.** In a literal reading of the Special Eligibility Conditions, page 28, under “Ancillary Use”, the ESL states, “Funding requests that include only a single price for components that contain both eligible and ineligible functionality, and fail to meet the requirements for Ancillary Use, are fully ineligible.” If an applicant fails to cost allocate ancillary use, they could risk 100% denial of the eligible services portion requested. Since the 30% rule was placed into effect several years ago, it seems that a similar opportunity should be provided to applicants to remove the ineligible use if the services that the applicant thought were ancillary are deemed to be ineligible. We have not had first-hand experience of the consequences this statement may have on an unsuspecting

applicant, but would like for the Commission to review this statement in light of unintended consequences that may result.

**“Educational Purposes” for wireless Internet Access use.**

The Eligible Services List on page 5 states that “Wireless Internet access service is eligible under the same provisions as wired access to the Internet. A wireless Internet access service designed for portable electronic devices is eligible if used for educational purposes. Off-campus use must be removed by cost allocation.”

We recommend that the Commission provide more clarification of what is meant by ‘educational purpose’ vs. “off-campus use” in relation to wireless Internet Access for portable electronic devices. On page 29 of the FY2013 ESL, the Commission states, “Some services outside of a school or library location may also be eligible for discount in certain cases, such as use by teachers or other support staff while accompanying students on field trip or sporting event.” Would this provision allow for wireless Internet access off-campus since it is for an educational purpose?

Would there be a situation when off-campus use is for an educational purpose and thus the wireless Internet access would be eligible for discount. For example, if a science class has wireless Internet Access data plans on portable electronic devices and they take the devices on a field trip to a local geological site where they run tests on the devices utilizing the wireless Internet Access for their science class, would the wireless Internet access be considered eligible since it was for an educational purpose even though “off campus”?

We also have situations where a school administrator uses a mobile hotspot so they can use their email service on their portable electronic device to get email to conduct school business. If they are using the wireless hot spot for school administrative purposes, would the off-campus use be considered for an educational purpose and thus eligible for discount?

**Not Eligible as Priority One Service - Broadcast “Blast” Messaging**

Page 10 of the FY2013 Draft ESL lists “Broadcast ‘Blast’ Messaging” as not eligible for discount. We agree with this determination, but recommend that the Commission provide additional explanation since we frequently find that applicants do not call “Text Alert Services” the same as “Broadcast Blast Messaging.” The glossary definition “Broadcast ‘Blast’ Messaging is a service that allows for a message to be created and delivered to a user defined group typically via voice or text message. “

We recommend that the item on Page 10 include more details for example “ Broadcast ‘Blast’ Messaging and similar services that allow for messages to be created and delivered to a user defined group typically via voice or text message.”

Even though the applicant reading the ESL could look up the details in the glossary, we recommend the additional details be shown with the itemized list on page 10.

### **Eligible Users and Locations**

The ESL on page 29, “Eligible Users and Locations” states, “ ‘Activities that are integral, immediate, and proximate to the education of students or the provision of library services to patrons, qualify as “educational purposes.’ The presumption is that activities on school or library property meet this standard.”

The ESL already has significant information regarding what is “school or library property.” We would like to see further clarification from the Commission on whether or not this includes leased facilities. Also, does “school or library property” include sites where education is delivered such as a hospital where a student is receiving educational services? Larger school districts in urban populations frequently have specialty schools located in hospitals or other residential treatment facilities. If the host institution is not 100% dedicated to education, at what point, if any, would the educational services provided by the school for the students in the residential treatment facility qualify as an eligible location under the description in the ESL regarding residential schools that serve students with special circumstances?

### **Telephone Components – Include VoIP equipment?**

Page 19 of the FY2013 Draft ESL states “One switchboard/attendant console necessary for operation of each eligible PBX or eligible Centrex telephone service is eligible.”

Should the sentence include “VoIP phone system” OR would it make more sense to replace “PBX” with “phone system”?

Similar question applies to the last sentence in the section “An intercom system that is an integral component of a PBX or other eligible product that is included in the cost of the eligible component is eligible.” Should “PBX” be replaced by “phone system” or “PBX or VoIP system”?

Conclusion

We appreciate the opportunity to submit comments to the Commission in regards to the Draft FY2013 Eligible Services List and sincerely appreciate the time that is devoted by Commission staff to the review and careful consideration of all comments submitted.

Respectfully Submitted by:



Jane Kellogg



Deborah J. Sovereign

Kellogg & Sovereign Consulting, LLC  
1101 Stadium Drive, Ada, OK 74820  
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