

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of:

Eligible Services List

Schools and Libraries Universal Service
Support Mechanism

GN Docket No. 09-51

CC Docket No. 02-6

**COMMENTS ON THE FY 2014 DRAFT ELIGIBLE SERVICES LIST
FOR THE SCHOOLS AND LIBRARIES UNIVERSAL SERVICE MECHANISM
(DA 13-1513)**

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Introduction

E-rate Provider Services respectfully submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Public Notice regarding the Eligible Services List (ESL) for the Schools and Libraries Universal Service Mechanism, commonly known as the E-Rate Program. E-rate Provider Services is a consulting firm serving Service Providers participating in the E-rate program. E-rate Provider Services' purpose is to assist E-rate Service Providers in navigating the complexities of the program, providing sales and compliance assistance, cost allocation services, bid and proposal review, and staff training.

On-Premises Priority 1 Wireless Service

E-Rate Provider Services listened to the broadcast of the Senate Commerce Committee hearing on E-Rate, held on Wednesday, July 17th, 2013, with great interest. Senator Markey spoke about the National Broadband Plan, and improving Wi-Fi, including remarks about bringing W-Fi all the way into the school. Mr. Coulter and Dr. Abshire each spoke positively about Wi-Fi as a learning tool, especially considering the nature of Wi-Fi ready devices such as iPads, Nooks, and Kindles. One of the panelists related an anecdote concerning iPads with electronic textbooks being, over a three years period, a cost-savings over traditional paper textbooks, and various panelists had similar stories concerning South Korea and Singapore and their efforts to make learning tools virtual.

Then, on Friday, July 19th, 2013, E-Rate Provider Services watched the webcast of the FCC's Open Meeting where the Commissioners spoke about their plans and hopes for the future of the E-Rate Program. While E-Rate Provider Services is planning a review and comment of the overall program, certain elements of the FCC's goals are especially pertinent to the current Eligible Services List, specifically, in-school wireless technologies.

Discussion

E-Rate Provider Services observes that currently, applicants have but one choice if they wish to receive E-Rate discounts for Priority 1 wireless internet access, which is to purchase a Cellular Data Plan from a traditional cell Service Provider. The structure of the fund, coupled with rising Priority 1 demand, without a fundamental change in the funding mechanism or a significant increase in the funding cap, makes it unlikely that Priority 2 services will ever be funded again. This effectively closes off the option for applicants of purchasing their own wireless access points (WAPs), and drives them to significantly more expensive solutions.

E-Rate Provider Services continues to be seriously concerned with the inclusion of Cellular Data Plans as an eligible service due solely to the very high per pupil cost. In light of the uncertainty concerning the structure of the program and in consideration of the NPRM that is currently available for public comment, E-Rate Provider Services respectfully submits an alternative that is significantly more cost-effective, and will fit into the current structure with only a minor expansion of the rules.

Because of the evolution in wireless technologies, a number of Service Providers have begun to provide managed wireless services to their customers. These services involve the installation of wireless access points (WAPs), the necessary cabling to connect them back to a central distribution frame or frames (wiring closets), and the sufficient network electronics to connect it all together. Of particular note is that the Service Provider would retain title to the equipment, provide all management and monitoring, and at the end of the contract, would remove all of the electronic equipment; no assets would remain.

E-Rate Provider Services comments that the above-referenced service conforms to all of the current rules for Priority 1 Services, except the Tennessee Test; clearly, as the rules are currently written, the installation of the cabling, network electronics, and WAPs exceed the limited on-premises equipment described by the Tennessee Test. However, E-Rate Provider Services comments that there are compelling reasons for the FCC to create a specific, targeted waiver in the rules governing the Tennessee Test: Innovation, Fairness, and, above all, Cost-Effectiveness.

Innovation & Fairness

When the Schools and Libraries Corporation, then Division, was originally constituted, the founding legislation was crafted to encourage innovation in technology. The authors knew that they could not possibly foresee the direction and pace of technological changes, and that it would be foolish to attempt to tightly define an exclusive list of specific technologies. Even with their wisdom and foresight, they could not anticipate the emergence of cloud-based technologies, nor the issues these technologies would raise when attempting the shoehorn the “square peg” nature of the emerging services with the “round hole” nature of existing program eligible services. Yet, because these technologies do not strictly conform to the fifteen year old categories of service, they are deemed ineligible, and are not fundable under current program rules.

Cost-Effectiveness

Even more critical to the survival of the program as a whole is the issue of cost-effectiveness. Current cost-estimates of an On-Premises Priority 1 Wireless Service yield a cost of \$25.00, per user, per year. Compare that with current cost-estimates of \$40.00 / user / month for cellular data services, with potential usage reaching higher than that. Please note that these service are usually cost-allocated to 50% eligible, based on a 50% on-premises (eligible), 50% off-site (ineligible) split. However, even factoring this in, cellular data plans start at \$240 / user / year in actual cost to the fund, compared to \$25 / user / year to the fund. In short, an On-Premises Priority 1 Wireless Services costs approximately 1/8th the cost of a cellular data plan solution.

Discussion

E-Rate Provider Services notes that, similar to the manner in which the well-intended cell phone bundling exception went awry, there is opportunity for this initiative to as well. Therefore, should the Commission decide to act upon this suggestion, E-Rate Provider Services suggests the following limitations to appropriately “fence in” the Tennessee Test exception.

First, limit the Tennessee Test exception to wireless networks only, not wired. E-Rate Provider Services acknowledges that wired network providers will, with some justification, claim that the Commission would be favoring one technology over another. However, E-Rate Provider Services notes that the cardinal strength of the

case for On-Premises Priority 1 Wireless Service lies in its significant cost-effectiveness, and due to the tremendous difference in costs between wired and wireless solutions, believes that wired network solutions are not nearly as cost effective. In addition, the impetus in Congress and at the FCC is for in-building wireless networking; wired networks barely received a mention.

Second, for philosophical purity, the end of the contract for this service would require removal of all installed services, including the limited in-building cabling necessary to connect the WAPs with the head-end network electronics. However, E-Rate Provider Services comments that the removal of this cabling is of no practical value, and therefore comments that allowing it to remain as a limited exception to the “no assets left behind” rule seems acceptable.

Solution Bundling

E-Rate Provider Services comments on the prospective clarification concerning the requirement that services such as blogging and chat room features can only be purchased from the Service Provider supplying the applicant’s primary web page. E-Rate Provider Services is aware that the FCC has gravitated to this position in other areas, including the requirement that firewall services can only be bought from the bandwidth provider, and language in the ESL that states that certain telecommunications services can only be purchased as part of an eligible telecommunications service. In every instance, E-Rate Provider Services is left wondering what the rationale is for such a stance?

First, it is contrary to the commission’s stated goal of increasing competition, in order to drive down prices and make the program as cost-effective as possible. In the case of web hosting, those providers who have specialized services and elect not to provide the school’s main web site are effectively enjoined from participating in the E-Rate Program. E-Rate Provider Services comments that, aside from administrative convenience, there doesn’t seem to be any reasons arguing FOR this odd prohibition.

Second, it stifles innovation. E-Rate Provider Services points to the Commission’s ruling about firewalls, and comments that a small, specialized Priority 1 firewall provider should be able to compete with the Service Providers providing bandwidth on equal footing. E-Rate Provider Services reasons that perhaps a smaller, “boutique” Service Provider might be more agile, provide more comprehensive services, or provide more in-depth or customized services; unbundling services from each other would allow applicants to select “best of breed” services, which may in fact be more comprehensive, or more cost-effective. Competition drives innovation, and drives down prices. If the FCC is concerned that such services may contribute to the overall upward pressure on Priority 1 funds, E-Rate Provider Services submits that the increase in competition should work to offset this upward pressure.

Third, E-Rate Provider Services notes that applicants always have the choice of selecting a “Sole-Source” Service Provider to supply any and all web-based service they desire; E-Rate Provider Services comments that forcing them into it serves little purpose.

Fourth, of particular note is USAC’s interpretation of the following passage from the 2013 ESL:

“In addition, the telecommunications component of voice or video conferencing services that provide a means for multiple users to participate in group discussions may be eligible if the services are limited only to eligible educational or library purposes.” (Pg 4).

In short, USAC has interpreted this passage in light of the other Commission rulings on bundling, that is, videoconferencing services are only eligible for discount if they are purchased from the provider providing the telecommunications bandwidth. E-Rate Provider Services notes that, especially considering that statewide networks frequently provide bandwidth but not video-conferencing or distance learning services, this interpretation severely inhibits the utility of statewide networks in general, and forces, in essence, an applicant to choose between their statewide network or much-needed videoconferencing services, or to provision an extraneous circuit simply to obtain funding for the videoconferencing service in question, which not only gains the commission nothing, but costs the fund for a circuit which the applicant doesn't really need. Further, if an applicant chooses a “Dark Fiber” from a utility or other “non-Telecom” provider who offer just the transport, the same comments apply.

Summary

E-Rate Provider Services summarizes its comments on the overall issue of bundling as follows:

- Bundling hurts competition by limiting applicant choices, driving them to larger providers;
- By limiting competition, the program does not receive the downward pricing pressure that competition can bring;
- By limiting choices, the program inhibits innovation; applicants cannot select a “best of breed” solution, mixing and matching the products that suit their needs.
- Finally, a service, if eligible, (that does not require contributor status) should be eligible regardless of the provider.

E-Rate Provider Services further comments on the specific issue of bundling of distance learning and video conferencing services as follows:

- E-Rate Provider Services respectfully requests that the Commission clarify whether USAC has correctly interpreted its intention regarding the bundling of distance learning and telecommunication services with the bandwidth provider.
- E-Rate Provider Services notes that if an applicant gets their internet bandwidth from a statewide or “dark fiber” network, as many do, this interpretation effectively prevents this applicant from receiving funding for distance learning services if the statewide or “dark fiber” network provides only bandwidth, and not additional voice or video services.

E-Rate Provider Services believes this is most likely an unintended consequence of the wording in question, and requests the FCC clarify that applicants can contract for advanced video services, i.e. video conferencing or multicast services from a provider other than the provider of telecommunications bandwidth.