

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Draft ESL for FY2014)	CC Docket No. 02-6
)	GN Docket No. 09-51
Schools and Libraries)	
Universal Service Program)	

To: Chief, Wireline Competition Bureau

**COMMENTS OF BLACKBOARD ENGAGE
DRAFT ELIGIBLE SERVICES LIST, FY2014**

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August 2, 2013

EXECUTIVE SUMMARY

Blackboard Engage appreciates the Wireline Competition Bureau's specific inquiry in the Public Notice associated with the draft Eligible Services List for FY2014 about "whether the current definition and description of eligible and ineligible web hosting services may be interpreted differently among vendors, and if differing interpretations could inadvertently promote competitive disadvantages." As the Bureau knows, Blackboard Engage has been concerned about this issue for some time. The State E-rate Coordinators Association ("SECA") also is concerned about the issue, noting: "[T]here are a plethora of offerings from web hosting companies that include additional, ineligible functionality under the guise of being ancillary." The Bureau seeks suggestions on "clarifications that could level the competitive playing field and eliminate potential confusion" among web hosting vendors about what is eligible for E-rate funding.

Blackboard Engage has evaluated several alternatives for clarifications that could level the playing field, improve parity among web hosting vendors, and ensure that E-rate dollars are spent only on eligible web hosting. After much analysis, Blackboard Engage proposes that the Bureau should: (1) no longer allow web hosting providers to bundle ineligible features with eligible web hosting for one price (bundling of services would be acceptable, but only if eligible features are priced separately from ineligible features); (2) eliminate the cost allocation procedure for web hosting; and (3) abolish application of the "ancillary" rule for web hosting services. Adopting these changes will add clarity and transparency to web hosting pricing, eliminate the need for subjective and opaque cost allocations, preserve USAC resources, and help ensure that E-rate dollars for web hosting are only spent on eligible services. The result will be a level playing field in which vendor pricing is transparent and enforcement of E-rate eligibility for web hosting can be better policed by USAC and the industry.

Blackboard Engage also urges the Bureau to refrain from making the two changes proposed in the Draft ESL for the definition of web hosting. The proposed changes are either duplicative of language that is already contained in the ESL, or must be applied more broadly to other similar services, such as e-mail, in order to observe technological neutrality.

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Edline, LLC d/b/a Blackboard Engage (“Blackboard Engage”), a leading provider of web hosting services for the educational marketplace, through counsel, hereby files these comments in response to the Public Notice and draft Eligible Services List (“Public Notice” or “Draft ESL”) for Funding Year 2014 released by the Wireline Competition Bureau (“Bureau”).¹ Blackboard Engage and its affiliates provide web hosting services to approximately 20,000 schools throughout the country, some of which participate in the Schools and Libraries (“E-rate”) universal service support program.²

Eligible web hosting services provide an essential means for students, teachers, parents and administrators to share important information, as a community, about the entire educational experience, including information about the school, classrooms, school events, student performance

¹ Wireline Competition Bureau Seeks Comment on Draft ESL for Schools and Libraries Universal Service Program, *Public Notice*, DA 13-1513 (rel. July 3, 2013).

² Edline, LLC merged with Blackboard in October 2011. Other affiliated web hosting companies include SchoolWorld, SchoolCenter, SchoolFusion, and TeacherWeb. Blackboard Inc., the parent company of Blackboard Engage, is a global leader in enterprise technology and innovative solutions that improve the experience of millions of families, students and learners around the world every day. Blackboard's solutions allow over 35,000 higher education, K-12, professional, corporate, and government organizations to extend teaching and learning online, facilitate campus commerce and security, and communicate more effectively with their communities. Founded in 1997, Blackboard is headquartered in Washington, D.C., with offices in North America, Europe, Asia and Australia.

and school initiatives in a manner that improves educational outcomes. Web hosting is used, in part, as a gateway for modern educational technology that enables teachers to utilize cutting edge learning and communications systems in the classroom and throughout the school. The Commission itself recognizes the valuable role that web hosting plays for schools, noting that “web hosting is essential for facilitating teaching and learning as well as communication among the entire school community” and “is an example of a service that can provide a substantial educational impact for a relatively small cost.”³

Blackboard Engage appreciates the Bureau’s question in the Public Notice regarding “whether the current definition and description of eligible and ineligible web hosting services may be interpreted differently among vendors, and if differing interpretations could inadvertently promote competitive disadvantages.”⁴ As the Bureau knows, Blackboard Engage has been concerned about this issue for some time. The Bureau seeks suggestions on “clarifications that could level the competitive playing field and eliminate potential confusion” among web hosting vendors about what is eligible for E-rate funding.⁵

Blackboard Engage has evaluated several alternatives for clarifications that could level the playing field, improve parity among web hosting vendors, and ensure that E-rate dollars are spent only on eligible web hosting. After much analysis, Blackboard Engage proposes that the Bureau should: (1) no longer allow web hosting providers to bundle ineligible features with eligible web hosting for one price (bundling of services would be acceptable, but only if eligible features are priced separately from ineligible features), (2) eliminate the cost allocation procedure for web hosting, and (3) abolish application of the “ancillary” rule for web hosting services. Adopting these

³ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18806, ¶ 100.

⁴ See Public Notice at 2.

⁵ See Public Notice at 2.

changes will add clarity and transparency to web hosting pricing, eliminate the need for subjective and opaque cost allocations, preserve USAC resources, and help ensure that E-rate dollars for web hosting are only spent on eligible services. The result will be a level playing field in which vendor pricing is transparent and enforcement of E-rate eligibility for web hosting can be better policed by USAC and the industry.

Blackboard Engage also urges the Bureau to refrain from making the two changes proposed in the Draft ESL for the definition of web hosting. The proposed changes are either duplicative of language that is already contained in the ESL, or must be applied more broadly to other similar services, such as e-mail, in order to observe technological neutrality.

I. WEB HOSTING VENDORS APPEAR TO INTERPRET WEB HOSTING ELIGIBILITY DIFFERENTLY, WHICH CREATES COMPETITIVE ADVANTAGES AND DISADVANTAGES AND AN UNLEVEL PLAYING FIELD.

The ESL as currently drafted does a good job of drawing the eligibility boundaries for web hosting features. However, web hosting vendors are not making eligibility determinations in the same manner. The State E-rate Coordinators Association (“SECA”) asserts that “there are a plethora of offerings from web hosting companies that include additional, ineligible functionality.”⁶ SECA suggests that this may occur because some web hosting companies include ineligible functionality in their web hosting packages under the rule that allows inclusion of “ancillary” ineligible features with eligible features when costs cannot be separately determined.⁷ SECA may

⁶ See Reply Comments of State E-rate Coordinators Alliance, CC Docket No. 02-6, at 5 (filed June 7, 2013).

⁷ See *id.* The FCC rule for ‘ancillary’ indicates that an otherwise eligible product or service that contains ineligible components on an “ancillary” basis does not require cost allocation if the cost of the ineligible functionality cannot be separately determined and if the product or service is the most cost-effective means of receiving the eligible product or service without regard to the value of the ineligible functionality. See 47 C.F.R. § 54.504(g)(2). While the “ancillary” rule makes sense in theory, in practice this rule has unintentionally created a loophole that some web hosting providers

be right – the problem may emanate from differing interpretations of the “ancillary” rule. The root cause, however, is unclear. It may be that vendors have varying interpretations of eligibility, or it may be that the current cost allocation process, which is not transparent, allows for gamesmanship in pricing, which creates inequities. Regardless of the reason, differing approaches to web hosting eligibility among vendors have created an unlevel playing field, and Blackboard Engage appreciates the Bureau’s request for additional information about how this issue can be solved.

A. The Web Hosting Product Offered by Blackboard Engage is Modeled After the Bureau’s Web Hosting Definition.

Each year, Blackboard Engage carefully studies the ESL, compares it to the company’s current web hosting offerings, and engages in an eligibility analysis in order to ensure that it provides an accurate eligibility percentage to its E-rate school customers. If eligibility is not clear regarding a particular feature, Blackboard Engage assumes that the feature is ineligible and either deducts it from its eligibility percentage or offers it to customers for a separate charge. Blackboard Engage, and Edline before it, models its web hosting offerings to closely follow the Bureau’s web hosting definition, excluding and pricing separately features and modules that the Bureau has deemed ineligible for web hosting.

Exhibit 1 is a webpage from the Edline website that describes to E-rate schools in detail what is eligible for E-rate funding, what is ineligible, and what can be purchased separately. Edline notes for its E-rate school customers that its “Learning Community Management System offers many products and services for K-12 school districts and their learning communities. However, ***only Edline’s website hosting service is eligible for federal funding discounts through the E-rate program.*** Website hosting from Edline is 95% eligible for E-rate funding (before calculation of the non-discounted portion).” Edline then provides lists of what E-rate will, and will

are exploiting by improperly bundling ineligible features into their core web hosting offering to avoid cost allocation.

not, fund for K-12 websites. Following this, Edline notes: “If you choose Edline as your website hosting provider,” there are products and services the school can purchase separately from Edline that can be used in conjunction with the website, “but they are not eligible for E-rate funding.” Those separate products and services are listed on the webpage (See Exhibit 1).

B. Schools are Requesting Expanded Web Hosting Feature Sets that Include Ineligible Features; Web Hosting Vendors that Bundle Eligible and Ineligible Features for One Price Offer a More Attractive Product, But This Raises Compliance Issues.

E-rate applicants, schools, may be confused about what is eligible for E-rate funding for web hosting. Schools routinely seek broader capabilities for web hosting than those that are designated as eligible in the ESL. Exhibit 2 is a chart Blackboard Engage created to describe the categories of services that actual schools are requesting as part of web hosting for FY2014. The chart depicts how web hosting products from Blackboard Engage and four actual competitors, who shall remain anonymous, appear to match up with the schools’ requests.⁸ As the chart makes clear, there are six features/products/services that are routinely requested by schools that are ineligible, but other web hosting vendors include these features in their web hosting packages to varying degrees.

For example, schools request “Learning Management Systems” and “Content Management Systems,” and other categories of features that go beyond the basic functionality of a website, including data integration to link to other school information systems, learning tools such as grading and testing systems, eLockers for storage of individual website user files, survey and analytics packages that allow polling and statistical analyses through vendor-provided analytics tools, e-Commerce modules that provide a portal or storefront on the school’s website that allows for purchase of school merchandise, and a mobile application that includes mobile application software.

⁸ Blackboard Engage created the chart based upon publicly available information and believes it to be accurate. However, due to the lack of transparency surrounding eligibility determinations and cost allocations, Blackboard Engage encourages USAC to replicate the chart by obtaining the information directly from web hosting service providers.

Based upon its study and understanding of the ESL, Blackboard Engage views these features as ineligible for E-rate funding. Blackboard Engage offers these features/products/services apart from its web hosting package, charging for them separately. However, other web hosting vendors appear to provide these features, together with eligible web hosting, as part of one package. Given the lack of transparency regarding cost allocations at USAC, it is unclear if these vendors are asserting that the ineligible capabilities are eligible as “ancillary,” or if they are cost allocating the ineligible features at USAC.

The Blackboard Engage practice of not combining ineligible services with eligible web hosting, an approach that respects the definition of eligible web hosting, inevitably raises questions from schools that want more features to be included in a package rather than fewer, but want to pay for fewer features rather than more. Web hosting vendors that include ineligible features in their offering without separate pricing are unquestionably offering a more attractive product to schools that may not have a good understanding of E-rate eligibility rules, but this raises compliance issues, as SECA intimates.

C. The Eligibility Percentages Claimed by Web Hosting Vendors Appear Skewed and, Perhaps, Unsupportable.

As Exhibit 2 depicts, Blackboard Engage claims only 95% eligibility for its web hosting product when it could likely claim 100% eligibility. Blackboard Engage is unaware of any features in its web hosting offering that are unquestionably ineligible, but it claims 95% eligibility because of the “templates” it provides in its web hosting package and the uncertain interpretation of eligibility for “forms and templates.”⁹ However, the four other vendors whose offerings are depicted on Exhibit

⁹ Currently, Blackboard Engage lists “template libraries” as the sole ineligible feature in its Item 21, but it is unclear if forms and templates for applicant-created content are actually ineligible.

2, claim eligibility from 91% to 100%, while their offerings appear to include features that Blackboard Engage views as ineligible.¹⁰ For example:

- Vendor A includes 2 ineligible features (surveys and analytics, and a mobile application), and claims 91% eligibility.
- Vendor B includes 5 ineligible features (learning tools, eLockers, surveys and analytics, e-Commerce, and a mobile application), and claims 94% eligibility.
- Vendor D includes 5 ineligible features (data integration, learning tools, surveys and analytics, e-Commerce, and a mobile application), and claims 97% eligibility.
- Vendor E includes 3 ineligible features (data integration, surveys and analytics, and a mobile application), and claims 100% eligibility.

Web hosting providers have a natural incentive to seek the highest eligibility percentage that USAC will accept while including the greatest number of features. There is a competitive advantage to be gained by providers who offer the richest set of features coupled with the highest level of eligibility. As a result, virtually all web hosting providers claim an E-rate eligibility of 90% or greater today regardless of the inclusion of multiple ineligible features in their core offering.

D. Bureau Confirmation of Whether the Web Hosting Features Requested by Schools Are Eligible or Ineligible Would Help Schools, Web Hosting Service Providers and the E-rate Program.

When issuing the FY2014 ESL, it would be helpful for schools and web hosting providers if the Bureau would examine the Exhibit 2 chart, which includes web hosting services requested by schools for FY2014, and confirm (at a minimum) that the features listed under “Other Features and Modules that are Requested from Web Hosting Vendors” are, in fact, ineligible. This clarification will ensure that school and vendor expectations of what E-rate will fund for web hosting are consistent with the ESL and the Bureau’s expectations.

A clarification regarding “forms and templates” also would be useful. As the Bureau is aware, Blackboard Engage does not presently include as eligible forms and templates (a basic form

¹⁰ Blackboard Engage cannot assert with precision which web hosting features its competitors classify as ineligible because the Item 21 is not readily available public information. USAC, however, has access to this information.

builder) that allow schools to create fill-in-the blank and administrative forms for their website using templates to accomplish such basic website functions as creating accounts, changing passwords, enabling log-ins, contacting a website administrator or teacher for support, allowing users to post content, and allowing users to engage in interactive communication on the website.¹¹ Blackboard Engage believes there is a close call on eligibility for forms and templates because of conflicting language in the ESL, as it noted last year:

Forms and templates are common features on all websites today and are integral to how school websites are created, administered and function. Forms and templates are used to accomplish such basic website functions as creating accounts, changing passwords, logging-in to the website, contacting a website administrator or teacher for support, allowing users to post content, and allowing users to engage in interactive communication on the website. The Commission has never suggested that forms and templates are ineligible, but such forms and templates inherently involve data input and retrieval. The description of what is ineligible for web hosting includes the phrase “features or software involving data input and retrieval.” However, the entire section suggests that data input and retrieval is permissible when associated with applicant-created content for an educational purpose. In conjunction with issuing the Eligible Services List for FY2013, Edline requests the Bureau to clarify that “data input and retrieval” associated with applicant-created forms, which both serve an educational purpose and are essential to website administration, are eligible.¹²

The Bureau took no action on Blackboard Engage’s request for clarification last year. If forms and templates for applicant-created content are in fact eligible as part of a web hosting service, a simple clarification as part of issuing the FY2014 ESL would be useful.

¹¹ “Forms and templates,” a basic form builder, is distinct from a “Surveys and Analytics” package that allows polling, data input and retrieval, and performs statistical analysis with vendor provided analytical tools.

¹² See Exhibit 3, Comments of Edline, LLC to *2013 ESL Public Notice*, CC Docket No. 02-6, GN Docket No. 09-51, at 1-2 (dated Aug. 6, 2012).

II. THE UNLEVEL PLAYING FIELD CAN BE FIXED BY RESTRICTING WEB HOSTING PROVIDERS FROM BUNDLING ELIGIBLE AND INELIGIBLE FEATURES FOR ONE PRICE, ELIMINATING THE COST ALLOCATION PROCEDURE FOR WEB HOSTING, AND ABOLISHING APPLICATION OF THE “ANCILLARY” RULE FOR WEB HOSTING.

Because many web hosting vendors are bundling ineligible features that are requested by schools together with eligible web hosting for one price, vendors must then undertake a cost allocation process at USAC in order to subtract the cost of ineligible components from the web hosting package. Blackboard Engage believes that the current cost allocation process leads to inequitable results, and questionable pricing, because there is no single method of cost allocation that is mandated under E-rate rules today, and there is no transparency and industry oversight of the pricing outcomes.¹³ Instead, applicants and service providers are free to choose any approach as long as two requirements are met: (1) the cost allocation method has a tangible basis; and (2) the price for the eligible portion must be the most cost-effective means of receiving the eligible service.¹⁴ As a result, the criteria utilized in individual cost allocations vary widely from one provider to another. Furthermore, USAC does not publish either the percentage cost allocation for individual services or the method utilized in supporting that percentage. This lack of transparency has precluded applicants and competing vendors from engaging in effective oversight of cost allocation practices and pricing outcomes.

For web hosting, cost allocation is further complicated because the percentage of eligibility or ineligibility attributable to each listed component of a web hosting service is highly subjective.

¹³ However, in the case of network file servers, USAC suggests a particular cost allocation approach. *See* <http://usac.org/sl/applicants/beforeyoubegin/eligible-services/cost-allocations.aspx>. This kind of approach could also be useful for web hosting, but has not been adopted.

¹⁴ 47 C.F.R. § 54.504(g)(1). The requirement for “most cost effective” appears to be met if the applicant undertakes a proper competitive bidding process that does not include consideration of ineligible components. As to the requirement for a “tangible basis,” the USAC website goes further than the actual FCC rule by stating that the cost allocation method used also must have a “realistic result.”

Even if two vendors list the same components in their service, their subjective determination of individual eligibility percentages for each component can vary, resulting in widely divergent eligibility formulations. This is attributable both to the fact that the services are different, and also to the level of “pushing the envelope” of individual vendors. What is more, the bases for these determinations are not known by applicants and other vendors because they are not publicly available.

To avoid the subjectivity of the current web hosting cost allocations that has created an uneven playing field, Blackboard Engage suggests that the Bureau should adopt bright line rules that: (1) prohibit web hosting companies from bundling eligible and ineligible features for one price; (2) eliminate cost allocation procedures for web hosting which serve as a *de facto* and opaque pricing mechanism; and (3) abolish application of the “ancillary” rule to web hosting services.

These actions will help achieve the Commission’s goals of ensuring “the prudent use of limited E-rate funding” and “providing clear rules to E-rate recipients” in several ways.¹⁵ First, web hosting providers will have clear rules regarding how eligible web hosting services must be offered and priced consistent with definitions in the ESL. Second, eliminating the opaque cost allocation process at USAC will force separate pricing for ineligible features which can then be monitored by USAC and the industry. To the extent that web hosting vendors attempt to circumvent E-rate eligibility for web hosting by offering optional, ineligible modules at a very low cost, USAC’s Free Services Advisory will clearly prohibit such subsidization. Third, by no longer allowing web hosting vendors to covertly bundle ineligible features with eligible web hosting for one price, the Bureau can ensure that E-rate dollars for web hosting service, a needed and valuable service for K-12 schools,¹⁶

¹⁵ See *Wireline Competition Bureau Seeks Comment on the Eligibility of Bundled Components Under the Schools and Libraries Program*, Public Notice, 28 FCC Rcd 4212, ¶ 3 (2013).

¹⁶ In earlier proceedings, hundreds of schools weighed in about the importance of continuing availability of web hosting for purposes of meeting educational requirements and budgets. A number of educators also commented that in economically difficult times, school districts must maximize diminishing funds, and web hosted communications services offer superior functionality

are only spent on eligible services. Finally, this recommended approach will answer concerns that have been raised by organizations such as SECA that “there are a plethora of offerings from web hosting companies that include additional, ineligible functionality” and that there is, therefore, the potential for E-rate waste with respect to web hosting services.

The result will be a more efficient ecosystem for all concerned. Schools will have better information to make informed decisions based on price. Schools also will have fewer applications rejected for including ineligible products or services. USAC will have less paperwork to process and will no longer have to review and approve cost allocations. USAC’s policing function will be improved and will be assisted by the industry because vendor pricing will be transparent. Vendors will benefit from bright line rules and a level playing field in which their competitive efforts can be properly rewarded in the market. Most importantly, the E-rate fund will benefit by ensuring that E-rate funding for web hosting is only spent on features that are truly eligible.

III. THE BUREAU SHOULD NOT IMPLEMENT THE LIMITATIONS FOR WEB HOSTING PROPOSED IN THE DRAFT ESL.

The Bureau’s rationale for the changes it proposed to web hosting in the Draft ESL are unclear. Absent articulation of a problem, Blackboard Engage may not be able to adequately respond to the Bureau’s proposals. However, Blackboard Engage offers the following two observations:

A. The Clarification that Schools Cannot Seek Funding for Multiple Web Hosting Providers is Already Covered in the Rule Against Duplicative Services.

The Bureau proposes adding the following clarification to the Draft ESL for web hosting:
“Applicants may seek web hosting services from a single provider and may not request funding for

and cost savings. See Reply Comments of Edline and ePals to the *E-Rate Further Notice Of Proposed Rulemaking And The National Broadband Plan E-Rate Notice Of Proposed Rulemaking*, CC Docket No. 02-6, GN Docket No. 09-51, at 8 and Appendix A (dated July 26, 2010).

multiple web hosting providers.”¹⁷ This clarification is not needed as the ESL already includes language that states: “. . . the following items are NOT ELIGIBLE for discount: . . . Any product or service that is duplicative of a service for which funding has already been requested.”¹⁸ Clarifications regarding duplicative services should not focus on a single technology such as web hosting, but should be applied equally to all eligible services. The ESL already accomplishes this with respect to duplicative services.

B. The Bureau Should Either Refrain from Making the Clarification that Blogging and Web Mail are Ineligible as Stand Alone Services or, in the Interest of Technological Neutrality, the Bureau Must Apply this Clarification More Broadly.

In the Draft ESL, the Bureau proposes to clarify that blogging and web mail are not eligible as standalone services, and must be part of a web hosting service in order to be eligible.¹⁹ The Bureau’s proposal, if adopted, would provide a significant advantage to web hosting service providers such as Blackboard Engage. The disadvantage would be faced by e-mail providers, and possibly others, who no longer would be able to offer blogging and chat.²⁰ Despite this potential advantage for web hosting providers, in order to observe technological neutrality, Blackboard Engage advocates that the Bureau not make the proposed clarification. Alternatively, if the Bureau decides to move forward with the clarification, Blackboard Engage urges that the Bureau maintain a technologically neutral stance that treats current and future Internet-based communication services as comparable and eligible communication methods. Thus, to the extent the Bureau wants to make

¹⁷ Draft ESL at 2.

¹⁸ FY13 ESL at 22 (rel. Sept. 27, 2012).

¹⁹ Draft ESL at 2.

²⁰ Blackboard Engage notes that the Bureau uses both the term “e-mail” and “webmail” in the Public Notice. “Webmail” is defined as “any email client implemented as a web application accessed via a web browser.” To Blackboard Engage’s knowledge, every provider of Priority 1 e-mail services meets this definition of “webmail.” From a Priority 1 perspective, “e-mail” and “webmail” are synonyms. In contrast, the Bureau’s position appears to be that e-mail and webmail are different services.

this clarification, it should be made with respect to e-mail, web hosting, and other Internet-based communication services. Such neutrality has been a long-standing core concept of the E-rate program that should not be compromised.²¹

IV. CONCLUSION.

Web hosting vendors take widely differing approaches with respect to web hosting eligibility. The disparity penalizes web hosting providers such as Blackboard Engage that have taken a conservative, and we believe correct, approach to their web hosting offerings and eligibility determinations consistent with the ESL. Blackboard Engage does not believe the ESL needs modification to address these issues. Instead, Blackboard Engage proposes that the Bureau establish bright line rules that: (1) prohibit web hosting companies from bundling eligible and ineligible features in a web hosting package for a single price; (2) eliminate the subjective and opaque cost allocation process for web hosting providers; and (3) abolish application of the “ancillary” rule to web hosting services. These actions will level the playing field among all web hosting vendors and will ensure that compliant web hosting vendors are not disadvantaged in the marketplace. Furthermore, implementation of these revisions will benefit the E-rate program by ensuring that dollars for web hosting service, a needed and valuable service for schools, are only spent on eligible services.

Blackboard Engage also respectfully requests that the Bureau clarify eligibility for forms and templates for applicant-created content, and confirm the ineligibility of web hosting features that go beyond basic functionality, including data integration, learning tools, eLockers, surveys and analytics, e-Commerce modules, and mobile applications.

²¹ For the same reason, Internet-based communication services of all types that have significant overlapping functionality must receive comparable eligibility treatment under Commission precedent for technological neutrality. This applies not only to the Internet-based communication methods of today, but also those yet to be developed.

Finally, Blackboard Engage urges the Bureau to refrain from adopting its new clarifications for web hosting in the Draft ESL. The suggested changes are either duplicative of what is already in the ESL, or they need to be implemented more broadly in order to observe technological neutrality.

Respectfully submitted,

_____/s/_____

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August 2, 2013

Exhibit 1

Edline's Guidance to E-rate School Customers regarding Web Hosting Eligibility

"Website Hosting and the Federal E-rate Program"

E-rate

Website Hosting and the Federal E-rate Program

Edline's Learning Community Management System offers many products and services for K-12 school districts and their learning communities. However, only Edline's website hosting service is eligible for federal funding discounts through the E-rate program. Website hosting from Edline is 95% eligible for E-rate funding (before calculation of the non-discounted portion). The following provides highlights of what E-rate will, and will not, fund for K-12 websites.

Overall, the E-rate program funds and provide discounts for K-12 school websites and library websites, including:

- Website administration tools to create and maintain your website
- Interactive communication features on your website such as blogs, discussion boards
- Webmail
- Features on your website that facilitate real-time interactive communications
- Instant messaging and chat

Please note that not all content, services, systems and features that can be used with a website are eligible for E-rate funding. For example, the following are ineligible:

- Costs for content created by third-party vendors
- Costs for vendor design services
- Charges for distance learning or video conferencing utilities such as web meetings
- Charges for student information systems, grade management systems, and similar products

If you choose Edline as your website hosting provider, the following products and services from Edline can be purchased separately and used in conjunction with your website, but they are not eligible for E-rate funding:

- QuickStart Custom Graphic Design Services
- Interactive Classroom (quiz tools, interactive assignments, etc.)
- Notification Systems (phone/SMS/text) for sending emergency and other communications
- Edline's Award-Winning Gradebooks
- Forms & Surveys
- LiveLink

This brief overview of federal E-rate funding for website hosting is not comprehensive. The lists above of eligible and ineligible website hosting services, products and features are by no means exhaustive. Schools and school districts choosing to apply for E-rate funding for website hosting must select a service provider after conducting a fair and open competitive bidding process, in compliance with state and local procurement guidelines and federal regulations. For a complete description of eligible and ineligible website hosting services, and to learn more about the E-rate program, the application process, and the rules and regulations, please visit www.USAC.org/sl.

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Exhibit 2

Comparison of Web Hosting Offerings and Eligibility Approaches Among Five Vendors

Web Hosting Feature List	Vendor A	Vendor B	Vendor C (Edline)	Vendor D	Vendor E	E-rate Eligible?
Website Administration Tools to Create and Maintain a website						
Basic Website Hosting and Guaranteed Uptime	√	√	√	√	√	Yes
Site Navigation and Search	√	√	√	√	√	Yes
Permissions and Approvals: Permissions for website access and posting content.	√	√	√	√	√	Yes
File Storage: Central file storage area for the school's content on the website.	√	√	√	√	√	Yes
Pre-configured Class and Teacher Pages	√	√	√	√	√	Yes
News and Announcements: Ability to post news and announcements to the website	√	√	√	√	√	Yes
Calendars	√	√	√	√	√	ancillary
User Logins (including Single Sign On)	√	√	√	√	√	Yes
Webmail: Permits sending of webmail to users on the website.	√	√	√	√	√	Yes
Photo Galleries: Allows images taken by the school to be posted, stored and viewed by website users.	√	√	√	√	√	Yes
Interactive communication features: Blogs, instant messaging and chat.	√	√	√	√	√	Yes
RSS Subscriptions: Allows users to receive content feeds from the Internet.	√	√	√	√	√	Yes
Parent Portal: Allows parents to access the website.	√	√	√	√	√	Yes
Mobile Access: Browser optimization to allow users to access the school website on mobile platforms.	√	√	√	√	√	Yes
Forms and templates (form builders): Allows schools to create fill-in-the blank and administrative forms for the website using templates.	√	√	√	√	√	?
Other Features and Modules that are Requested from Web Hosting Vendors						
Data Integration: Ability to link to other systems for information import/export, including learning management systems.				√	√	No
Learning Tools: grade management systems, tests or testing systems, homework hand-in and correction, collaborative tools, etc.	Unclear	√		√		No
eLockers: Storage for individual user files	Unclear	√				No
Surveys and Analytics: Software that allows polling, data input and retrieval, and performs statistical analysis with vendor-provided analytics tools	√	√		√	√	No
e-Commerce: Module that provides a portal storefront on the school's website that allows purchase of, and payment for, school merchandise.		√		√		No
Mobile Application: Mobile application software.	√	√		√	√	No
E-Rate Eligibility	91%	94%	95%	97%	100%	
# of Ineligible Features	2	5		5	3	

Exhibit 3

Comments of Edline to FY2013 Draft ESL

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Draft Eligible Services List for FY2013)	CC Docket No. 02-6
)	GN Docket No. 09-51
Schools and Libraries)	
Universal Service Program)	

**COMMENTS OF EDLINE
DRAFT ELIGIBLE SERVICES LIST, FY2013**

Edline, LLC (“Edline”), a leading provider of web hosting services for the educational marketplace, and a participant in the Schools and Libraries (“E-rate”) universal service support program, hereby files through counsel these comments to the draft Eligible Services List for Funding Year 2013 (the “draft ESL”).¹ Edline and its affiliates provide web hosting services to approximately 20,000 schools throughout the country.²

In these comments, Edline seeks confirmation from the Bureau that data input and retrieval associated with applicant-created forms and templates is eligible as part of web hosting. Forms and templates are common features on all websites today and are integral to how school websites are created, administered and function. Forms and templates are used to accomplish such basic website functions as creating accounts, changing passwords, logging-in to the website, contacting a website administrator or teacher for support, allowing users to post content, and allowing users to engage in interactive communication on the website. The Commission has never suggested that forms and templates are ineligible, but such forms and templates inherently involve data input and retrieval.

¹ The draft ESL was released on July 5, 2012 by the Wireline Competition Bureau (the “Bureau”) of the Federal Communications Commission (the “Commission”). Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program, *Public Notice*, 27 FCC Rcd 7405 (2012) (“Public Notice”).

² Edline merged with BlackBoard in October 2011. Other web hosting companies that are affiliated with Edline are SchoolWorld, SchoolCenter, SchoolFusion, and TeacherWeb.

The description of what is ineligible for web hosting includes the phrase “features or software involving data input and retrieval.”³ However, the entire section suggests that data input and retrieval is permissible when associated with applicant-created content for an educational purpose. In conjunction with issuing the Eligible Services List for FY2013, Edline requests the Bureau to clarify that “data input and retrieval” associated with applicant-created forms, which both serve an educational purpose and are essential to website administration, are eligible. A clarification in the Order may be all that is needed without editing the draft ESL.

I. Forms And Templates, Which Enable Data Input And Retrieval, Are Essential To The Functioning Of School Websites.

To illustrate how schools and website administrators use forms and templates to create, maintain, and operate websites for a school community, consider the following examples:

- Although school websites are visible to the public, only registered users can post content or view password-protected pages. Registration enables the website administrator to determine the web pages and content the user can see and post. The registration process is enabled through a template or online form that contains blank fields and asks the user to input data such as the user’s name, preferred password, and other basic demographic information to validate the user’s presence on the website. (*See Attachment 1*).
- Every school website allows authenticated users to post materials and engage in interactive communication over the website. These data input functions also are enabled through the use of forms or templates that contain blank data fields and ask the user to input the message or content it wishes to share. (*See Attachment 1*).

In addition to the above examples, schools, teachers and website administrators create forms for any number of reasons including, for example, collecting parent permission for field trips and submitting questions in advance of parent–teacher conferences. (*See Attachment 1*). This capability, to create fill-in-the-blank content, is a part of the administrative interface of the web hosting service and allows a teacher to create a web page containing a set of questions for parental feedback rather than creating a form offline and uploading it to the website as a PDF file. Instead of each parent

³ Draft ESL at 13.

printing and manually filling out permission slips in PDF forms, for example, and bringing the printed and completed forms to the school for further administrative action, a web page form that is created and posted by the teacher allows parents to submit data directly to the teacher, saving time and resources.

Although forms and templates are created for educational purposes and are needed for basic website functions, eligibility is ambiguous because these tools inherently involve data input and retrieval. The draft ESL indicates that “features or software involving data input and retrieval” are ineligible.⁴ However, consistent with other language in the draft ESL, Edline does not believe the Commission or Bureau intend that data input and retrieval associated with applicant-created forms, are or should be ineligible. Indeed, other web hosting providers have assumed, perhaps rightly, that applicant-created forms and templates, and associated data input and retrieval, are 100% eligible. Edline seeks clarification and confirmation from the Bureau that this interpretation is correct.

II. Bureau Guidance Is Needed To Confirm Eligibility For Data Input And Retrieval That Is Associated With Website Forms And Templates.

In recent years, the Commission and the Bureau undertook significant effort to make clear the eligibility of various components of a web hosting service that are essential to, and inherent in, the functioning of a school website. These clarifications affirmed the eligibility of integrated web hosting software, content editing and content creation by schools and users, password protection and interactive communication features. The Bureau also rightly affirmed the ineligibility of vendor-provided content.

The Commission and Bureau clarified the definition of web hosting to move away from a static vision of websites as simply repositories of information that is “uploaded.” Today, the definition of web hosting recognizes the interactive nature of websites that facilitate the exchange of

⁴ Draft ESL at 13.

information among members of the school community. The clarified definition of web hosting includes as eligible “website administration tools for the creation and maintenance of the website.”⁵ Forms and templates that allow a school or website administrator to create website accounts, change passwords, create web pages, accept user messages, and facilitate user postings are all good examples of administrative tools that are essential to the functioning of the website.⁶

Although the Bureau and Commission⁷ have never asserted that online forms and templates are ineligible,⁸ such forms require the input of data. There is ambiguity in the draft ESL regarding “data input and retrieval.” The draft ESL sets forth as ineligible:

Content supplied as part of a web hosting service created by third-party vendors or the web hosting service provider itself and any features or software involving data input or retrieval other than the provision of applicant-created content for an educational purpose (*e.g.* teacher web pages or blogs).⁹

⁵ Draft ESL at 12.

⁶ The Bureau also could be of the view that online forms and templates, which allow for the input of data, messages and content by users, are eligible as features that facilitate interactive communication on the website.

⁷ In a Fall 2009 USAC training, USAC listed templates as ineligible features. In subsequent presentations, USAC did not specifically identify templates as ineligible. *See*, page 16 of the “Advanced Eligible Services Presentation” for the Fall 2009 USAC training, available at <http://www.usac.org/res/documents/SL/training/2009/2009-sl-fall-advance-eligible-services.pdf>.

⁸ Ineligibility was assumed by service providers in the past because the Eligible Services List formerly provided that “content editing,” and “data input and retrieval” were ineligible. *See*, Wireline Competition Bureau Announces Comment Deadlines on E-Rate Broadband Notice of Proposed Rulemaking, Eligible Services List Further Notice of Proposed Rulemaking, and on E-Rate Draft Eligible Services List for Funding Year 2011, *Public Notice*, 25 FCC Rcd 7317, 7329 (2010). However, the Commission clarified last year that ineligible “content editing” does not apply to content editing and content creation by users, teachers and students, but rather to third-party vendor content. Accordingly, the words “content editing” were eliminated last year from the description of what is ineligible for discounts. “We provide further clarifications from the Sixth Report and Order regarding features that facilitate the ability to communicate, (such as blogging, e-mailing over a school or library’s hosted website, discussion boards), and services that may facilitate real-time interactive communication (such as instant messaging or chat). Among other revisions, we remove the phrase “content editing” from the ESL section explaining the ineligible features of a web hosting service. This clarification addresses questions in the record on whether the term “content editing” applied to teachers or students using the interactive features of a school’s web page such as blog or discussion board” *Schools and Libraries Universal Service Support Mechanism, Order*, 26 FCC Rcd 13280, 13283, ¶12 (2011) (“2011 ESL Order”).

⁹ Draft ESL at 13 (emphasis added).

Guidance and clarification from the Bureau is needed about what this language means and how it should be interpreted. It may be that the Commission intends that applicants can create their own content for educational purposes, including web pages that contain fill-in-the-blank forms and enable data input and retrieval, but the Bureau needs to confirm that this is a fair reading. Edline requests the Bureau to make it clear that data input and retrieval is permissible when associated with applicant-created content, including applicant-created forms, that are posted on a website for an educational purpose.

III. The Bureau Has At Least Two Options For Clarifying The Eligibility Of Data Input And Retrieval.

Edline has two suggestions for how the Bureau can cure any confusion over the eligibility of data input and retrieval associated with applicant-created forms and templates.

First, the Bureau could indicate in the FY2013 Eligible Services List Order that schools/applicants create and utilize forms and templates on their websites for many essential educational purposes, including to create accounts, change passwords, log-in to websites, contact administrators for support, allow users to post content, and allow users to engage in interactive communication on the website. Nothing in the draft ESL should be read as suggesting that associated data input and retrieval is ineligible. Applicant-created forms, posted to a website, are eligible either as website administration tools, or as applicant-created educational content that involves data input or retrieval, or both.¹⁰

¹⁰ The Bureau could justify the eligibility of data input and retrieval in forms and templates as ancillary to eligible web hosting because, as a practical matter, it is not possible to assign a separate cost to these inherent website functions. The FCC rule for “ancillary” indicates that an otherwise eligible product or service that contains ineligible components on an ancillary basis does not require cost allocation if the cost of the ineligible functionality cannot be separately determined and if the product or service is the most cost-effective means of receiving the eligible product or service without regard to the value of the ineligible functionality. *See* 47 C.F.R. §54.504(e)(2).

Edline assumes the Bureau would reiterate that this clarification of eligibility does not change the ineligibility of vendor-provided content and that “other systems such as: Student Information Systems (SIS); databases; student attendance or grades or grade management; course scheduling; tests or testing systems; on-line/interactive education systems; and learning/education management systems” will remain ineligible.¹¹

A second option is for the Bureau to clarify what is ineligible for web hosting discounts by making it clear that applicant-created content (not vendor-created content) for an educational purpose can include forms and templates that schools create and post on their websites for data input and retrieval:

The following services are **NOT ELIGIBLE** for discount:

...

Content supplied as part of a web hosting service created by third-party vendors or the web hosting service provider itself and any features or software involving data input or retrieval other than the provision of applicant-created content for an educational purpose (*e.g.* teacher web pages, **school web pages that include forms and templates**, or blogs).¹²

IV. Conclusion.

In recent years, the Bureau has made many helpful changes to the Eligible Services List to make clear the eligibility of web hosting components that are essential to and inherent in a web hosting service. These clarifications recognized the dynamic, interactive nature of school websites, and affirmed the eligibility of integrated web hosting software, content editing by schools and users, password protection and interactive communication features. Website forms and templates that applicants use to enable data input and retrieval are integral to the functioning of school websites

¹¹ Draft ESL at 13.

¹² Draft ESL at 13 (suggested edit in bold and underline).

and are used for an educational purpose. The Commission has never declared forms and templates ineligible, but such forms require data input. Consistent with language in the draft ESL that suggests data input and retrieval is permissible in connection with applicant-created content for an educational purpose, Edline requests the Bureau to clarify that data input and retrieval associated with applicant-created forms, which both serve an educational purpose and are essential to website administration, are eligible.

Respectfully submitted,

_____/s/_____

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ATTACHMENT 1

These typical website forms and templates allow users to post news items, post comments, add emails and change passwords. Users are prompted to enter data into blank fields which is retrieved and used by the website administrator to facilitate the essential functioning and administration of the website. Website administrators and users also can create web pages that contain fill-in-the-blank questions or multiple choice questions for posting on the website.

What would you like to call your new news item?

NEWS ITEM TITLE

Add Email Address

Add Email Address

Email Address:

Re enter Email Address:

You will be sent a confirmation message to your email address in the boxes above. If you do not receive the email, please check your bulk and junk email folders. If you have a list of allowed email addresses please add 'sender@edline.net' and 'info@edline.net' to the list.

Add Comment

Your name will be displayed with your comment.

Enter Your Comment:

Font family: Font size:

Change Your Password

Password Rules

- Passwords can contain only letters and numbers.
- Passwords must be at least 4 characters long.
- Passwords should be easily remembered and stored in a safe place.
- The new password must be different than the current password.

Type your current password:

Type your new password:

Retype your new password:

MY EDLINE TOOLS

Default Font: Arial Size: 3 (12pt)

Done

Form Builder

Preview...

Add Item: Short Typed Answer (one line of text) at position: 3 Add Now

Position 1

1. Question 1: Fill in your information

Edit Delete Clone Move Down Move to Position: 2 Go

Position 2

(required) 2. Question 2: Fill in your information

Edit Delete Clone Move Up Move to Position: 1 Go

CERTIFICATE OF SERVICE

I, Carly T. Didden, certify on this 6th day of August 2012, a copy of the foregoing "Comments" has been served via electronic mail, to the following:

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I, Benjamin Bartlett, certify on this 2nd day of August, 2013, a copy of the foregoing Comments has been served via electronic mail or first class mail, postage pre-paid, to the following:

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