

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

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	

COMMENTS OF E-RATE MANAGEMENT PROFESSIONALS ASSOCIATION

The Federal Communications Commission (“Commission”) has requested public comments on the draft Eligible Services List (“ESL”) for funding year 2010. The E-Rate Management Professionals Association, Inc. (E-MPA) hereby submits its comments.

The E-Rate Management Professionals Association, Inc. (E-MPA) is a (501)(c)(6) trade association. Its purpose is to promote excellence and ethics in E-rate professional management and consulting through certification, education and professional resources. E-MPA is an advocate for the critical role served by E-rate management professionals and consultants. The organization strives to strengthen and support the E rate program by acting as a self-governing body of E-rate management professionals and consultants (hereafter referred to collectively as “consultants”). E-MPA provides assurance to stakeholders by maintaining the highest standards, developing and promoting best practices, and requiring ethical conduct for all members.

INTERCONNECTED VOIP

E-MPA supports the proposed changes regarding Interconnected Voice-over-IP (VoIP). The changes proposed include the following comments concerning Interconnected VoIP:

- Expanding the categories in which applicants can seek interconnected voice over Internet protocol (VoIP) services by adding interconnected VoIP to the telecommunications and Internet access categories;
- Finding that user licenses for interconnected VoIP systems are eligible under internal connections as server-based software;

Challenge

Many service providers and applicants in the past have attempted to circumvent the On-Premise Priority One rules by implementing interconnected VoIP in a manner that is counter to the intent of the current rules regarding such an implementation. This includes service providers who are Internet Service Providers and are not authorized to deliver carrier-based telecommunications services, as well as the carriers themselves. Additional CPE hardware has been installed such as routers, switches, and other hardware that is actually Priority 2 equipment.

The omission of user licenses as a part of Interconnected VoIP creates a hardship on the applicant by forcing them to use their internal budgets to pay for these licenses if their discount rate is below the funding floor for a given year.

The schools security and entire operation depends on a reliable telephone system. Unless they can depend on a new system to provide the same degree of reliable operation as the current analog system will prevent them from taking advantage of the many cost savings possible through using a digital delivery system.

Interconnected VoIP Recommendation

Clarification of the present ESL sections regarding Interconnected VoIP is long overdue if the problems listed above are to be corrected. The content included in the present On-Premise Priority One rules should be included with any changes. Additionally, the addition of the following paragraphs extracted from the January 16, 2009 News Brief would reinforce the intent of the Commission to uphold all previous rules.

Only the lease of a single basic terminating component is eligible as Priority One. As established in the Third Report and Order (FCC 03-323, released December 23, 2003), "to the extent an applicant seeks to *lease* multiple terminating components, one would be deemed eligible for funding as a Priority One service and the remainder would be eligible for funding as Priority Two Internal Connections. Further, if an applicant seeks to *purchase* a single basic terminating component, it will be eligible for a discount only as Priority Two Internal Connections." Equipment such

as channel service unit/data service units (CSU/DSUs), network interface devices, cable modems, and gateways are considered basic terminating components.

A gateway device located on the applicant premise may be included as part of an eligible Priority One service as a single basic terminating component. A gateway device is analogous to a CSU/DSU or a network interface device (NID) in that it functions as the termination point for a Priority One service

ELIGIBILITY OF WEB HOSTING

E-MPA recommends that the Commission provide additional clarification concerning Web Hosting. The proposed description (pp 8) provides the following eligibility information: “A web hosting service that provides a means for a school or library to display content on the Internet is eligible. Web hosting may include intranet service and/or password protected pages.”

“Intranet” Challenge

We appreciate the Commission’s continuing efforts to clarify the eligibility of Web hosting. Web hosting continues to be a source of confusion, and using the term “Intranet” adds to the confusion. The traditional definition of an intranet is the use of Web protocols in a local network. Since the proposed ESL does not mention the eligibility of content on private networks, it appears that the Commission is talking about an “extranet,” which is content available through the public Internet, but only to authorized users. The term “extranet” has not been widely taken up in popular English, and the term “intranet” is being used by some to include content available on the Internet. However, for network engineers, there is still a clear distinction between the two terms, and “intranet” refers only to content not available from the Internet.

Use of the term “intranet” will lead to service providers installing Web servers in applicant locations (probably in the firewall’s DMZ), which will be available only from the client locations, and categorizing those servers as Priority One On-Premise Equipment. In fact,

there are services currently using this model to deliver streaming video, which would become eligible if Intranet Web hosting is eligible.

Web Hosting Clarification

If the Commission's intention was to clarify the eligibility of pages that are available from the Internet, but protected with a password, the term "intranet" should not be used. If the Commission is clarifying the eligibility of content presented using Internet protocols, but **not** available from the Internet, "intranet" can be used, but the ESL should in that case spell out that services providing content not available to the Internet are eligible.

Web Hosting Cost Allocation

Looking more broadly at Web Hosting, E-MPA recommends that the methodology for cost-allocating Web Hosting be more transparent. USAC should publish the process for determining what portion of Web hosting charges are eligible for funding. After a cost allocation agreement is reached between USAC and a Web Hosting service provider, the details of the cost allocation should be approved and published by the FCC so that applicants can be sure that the cost allocation will not later be found to be incorrect.

UNBUNDLED WARRANTIES

The Maintenance and Technical Support of Internal Connections entry (p. 20) proposes to add Unbundled Warranty to the list of eligible maintenance services, but the general introduction to the Basic Maintenance of Internal Connections continues to note that: "All requests in this category are for services to be delivered within the July 1 to June 30 Funding Year."

Challenge

Unbundled warranties are clearly an important component of basic maintenance, but treating them as traditional recurring services, to be funded only for an allocated portion of coverage within a specific funding year limits the benefits of E-rate support.

Unlike many other recurring services that are utilized on an ongoing basis from July to June, warranty services typically begin only when equipment is installed. As a practical matter,

E-rate applications for Internal Connections equipment have never been approved by the start of the funding year. As a result, most equipment is installed well into the funding year, or even in the next funding year. This means that annual warranty periods are almost never exactly, or even closely, aligned with the E-rate funding year.

Assume, for example, that equipment is installed April 1st. A one-year warranty would then cover the period April 1 to March 31 — three months in the current funding year and nine months in the next funding year. Under E-rate's recurring services rules, this would have several adverse effects, namely:

1. Although the applicant may have applied for and have been funded for a full year's warranty cost, it would be eligible for only one-quarter of that funding in Year 1.
2. Although the other three-quarters would be theoretically eligible in Year 2, the application for that year would have already been filed. In all likelihood, therefore, the applicant would receive E rate funding for only a portion of the warranty year.
3. If the applicant plans to renew the warranty for additional years, the E-rate problem only gets worse. Most equipment providers will not extend a warranty contract until just before the existing contract is set to expire. For a April-March warranty year, this means that the applicant will never have a signed contract in place for even a portion of the following year when E-rate applications for that year need to be filed in early February

Unbundled Warranties Recommendation

Unbundled warranty costs need to be treated as annual recurring charges, with entire annual amount being deemed eligible within the funding year.¹ Although Block 5 of FCC Form 471 requires recurring costs to be expressed in terms of months of service, USAC procedures should permit annual warranty costs paid within a funding year to be covered for a full twelve months, rather than require an annual fee to be apportioned into two funding years.

This recommendation could be implemented within the proposed ESL by adding a footnote to the third paragraph in the general introduction to the Basic Maintenance of Internal Connections (p.20) reading: **“An annual equipment warranty shall be deemed fully delivered within the funding year in which warranty service is initiated.”**

SOFTWARE LICENSES

The Software entry (pp. 14-15) lists a number of types of software, including Client Access Licenses, which are deemed eligible in the Internal Connections category.

Challenge

By including software in the internal Connections category, funding for software purchases is subject to the Two-in-Five Rule. For major software purchases, often made in connection with the purchase and installation of new equipment, this is not problematic. However, software acquired on an annual subscription basis, as is the case with many types of client access licenses, have more in common with recurring maintenance services than with non-recurring installation services.

¹ There are two other — albeit inferior — ways to partially address the annual warranty payment and contract issues, namely:

1. Permit applicants to include both bundled and unbundled warranty costs in the Internal Connections category in the funding year associated with the equipment installation. This approach does not address multi-year or renewable warranty costs.
2. Permit applicants to apply to file warranty costs under contracts that are expected to be renewed in a coming funding year. This could be done by using procedures equivalent to those permitted for State Master Contracts. This approach, however, is confusing and burdensome, and might create an unacceptable exception to an established procedure.

Subjecting otherwise eligible subscription software services to the Two-in-Five Rule deprives many of the poorer applicants of much needed E rate support for ongoing software costs in three out of every five years.

Software Licenses Recommendation

Annual subscription renewals for eligible software should be considered a maintenance service and should be added to the list of services provided in the Maintenance and Technical Support of Internal Connections entry (p.20). If the Commission adopts this approach, we recommend that annual software subscription services be treated in the same manner as unbundled equipment warranties discussed above.

ADMINISTRATIVE FEES

E-MPA recommends that the Commission provide additional clarification regarding the eligibility of administrative fees assessed by service providers. The draft Miscellaneous Fees and Charges entry (pp. 22-23) states the following:

Taxes, surcharges, and other similar, reasonable charges incurred in obtaining an eligible product or service are eligible. This includes customer charges for universal service fees but does not include additional charges for universal service administration.

Challenge

In an effort to minimize the nominal cost of service, usually for competitive purposes, a number of service providers are incorporating various operating costs under various names such as surcharges, taxes, and fees in the Other Charges and Credits sections of their invoices. This is making it increasingly difficult to identify which fees, if any, should be treated as ineligible administrative fees for E-rate purposes.

A review of a sampling of AT&T bills, for example, shows the following OC&C descriptions:

- Long Distance Service Universal Connectivity Charge – Federal Interstate/International (sometimes abbreviated “Universal Connectivity/Inter”)
- Carrier Line Charge
- In State Connection Fee – Carrier Line Assessment
- Federal Regulatory Fee
- Administrative Expense Fee (with or without an unexplained “DCS” designation)
- Monthly Invoice Charge
- State and Local Taxes
- State Gross Receipt Surcharge
- City Utility Surcharge
- Property Tax Allotment
- Intrastate Surcharge
- Federal Excise (a tax which we thought had been repealed)

When queried, AT&T E-rate contacts indicate that only the Administrative Expense Fee is ineligible. Unfortunately, there is no indication on the invoices to indicate that this is for “additional charges for universal service administration,” applying only to E-rate customers, or whether it is a general administrative fee charged all customers.

Administrative Fees Recommendation

Although we believe that the basic eligibility principle can be derived from a close reading of the existing ESL language quoted above, we suggest that additional clarity be provided by adding the following:

Taxes, surcharges, and other similar, reasonable, **and general customer** charges incurred in obtaining an eligible product or service are eligible. This includes customer charges for universal service fees, but does not include additional **administrative** charges **applied only to universal service fund recipients**.

Further, since much of the confusion on administrative expense fees revolve around language on telecommunication service invoices, we recommend that Commission encourage carriers under its jurisdiction to more clearly label fees applicable only to its E-rate customers.

MINOR CORRECTIONS

In the “Ineligible for Erate Funding as Internet Access Services,” the first bullet point begins with “Internet or charges for creation or display of information.” That sentence should be deleted, as it is unclear and contains information that is repeated elsewhere in the list. The second sentence is repeated in the 9th bullet point, and should be deleted. The remainder of the first bullet point should be moved to follow the 3rd bullet point.

Respectfully submitted:

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