

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

In The Matter Of)
)
Modernizing the E-rate Program) WC Docket No. 13-184
For Schools and Libraries)
)

***Ex Parte* Comments of the
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

The Schools, Health & Libraries Broadband Coalition (“SHLB Coalition” or “SHLB”) respectfully submits these *ex parte* comments to respond to some of the comments filed in this docket with respect to the FY 2016 Eligible Services List (ESL) (DA 15-615).¹ The SHLB Coalition is a broad-based coalition of organizations that share the goal of promoting open, affordable, high-capacity broadband for anchor institutions and their communities.²

A. The Eligible Services List Should Allow Schools and Libraries the Flexibility to Use the Technologies That They Believe Will Best Suit Their Needs.

From the beginning of our participation in E-rate reform, the SHLB Coalition has emphasized the importance of technological-neutrality and provider-neutrality, and the FCC has largely agreed with these principles. Nonetheless, certain parties have suggested changes to the ESL to try to skew the rules against particular technology solutions or certain providers. We urge the FCC to remain true to the decisions made in 2014 to equalize the treatment of broadband services and to allow schools and libraries the maximum degree of flexibility to determine what is the most cost-effective solution to their broadband needs.

Granting applicants flexibility is especially important today given the immense changes in the marketplace and the FCC’s E-rate rules. The transition from TDM to IP-based services is raising a number of questions for applicants. Also, the pace of changes can be very different from location to

¹ While the SHLB Coalition did not have a chance to file comments or reply comments in this docket by the comment deadlines, we respectfully ask for these *ex parte* comments to be included in the record. A full list of our members is contained at <http://shlb.org/about/coalition-members>.

location and region to region. As Funds for Learning points out, the terminology and definitions of newer technologies vary significantly within the industry. Furthermore, the 2014 rule changes provided both new funding and also new opportunities for schools and libraries to obtain support for managed wireless services, for dark fiber, for self-construction, and many other technologies. These changes have created a fair amount of confusion about what services are and are not eligible under the new E-rate rules. As a general matter, using the ESL to eliminate technology options at this early stage would be at best premature and at worst counter-productive. While the SHLB Coalition supports transitioning the E-rate program from traditional voice telephony to broadband, the reality is that many smaller schools and libraries are being required to make significant changes to their operations to reflect the changing E-rate priorities, and excluding certain broadband options would not allow schools and libraries to consider the most cost-effective methods of obtaining high-capacity broadband service.

For all these reasons, we believe that the ESL should permit schools and libraries to have as much flexibility as possible. Making the ESL too specific or too limiting by ruling out certain options may exacerbate the difficulties that schools and libraries face as they as they transition to the new rules. Furthermore, local decision-makers will often have a better understanding of the services that suit their broadband needs than federal officials. The FCC has been clear about the short-term and long-term broadband goals for applicants and has been understandably reluctant to provide a great deal of definitive guidance about the inclusion of certain technologies and the definitions of key terms to achieve these goals, wisely leaving these decisions to be made at the local level. For all these reasons – confusion around the rapidly changing market terminology, the IP transition, and the importance of local decision-making – the ESL should include language that recognizes that E-rate applicants should be given the “benefit of the doubt” regarding their E-rate funding applications, and funding should only be denied when it is absolutely clear that a service or expense is clearly inconsistent with the FCC’s goals and the E-rate rules.

B. The ESL Should Be Clarified to Allow Applicants the Flexibility to Implement the Most Cost-Effective Broadband Options.

To reflect this approach, we suggest the following wording changes to the ESL that will ensure that schools and libraries have the flexibility to consider the best technological options for their needs:

- a. CRW Consulting and SECA have correctly noted that the FCC has established connectivity goals for schools and libraries, largely out of recognition that bandwidth demands are growing quickly and schools and libraries should be encouraged to enhance the speed and

quality of their broadband connections in order to accommodate one-to-one learning, digital research, on-line learning, etc. Schools and libraries may have to obtain additional bandwidth, and the new changes allow for this additional bandwidth to be obtained in many different ways (additional circuits, additional providers, additional pathways, self-provisioning or a combination of these options). Schools and libraries now have greater freedom to evaluate the options and chose the best practices for their school or library. Thus, the reference to “duplicative services” should be dropped. Considering the data from this past year showing that schools often incur Internet access downtime due a surge in demand and lack of capacity, it is increasingly considered a “best practice” for schools to have a secondary independent service providing part of the bandwidth. The language barring fraud should be sufficient to protect against the possibility that an applicant might engage in excessive spending. The ESL should state that, as long as the applicant can justify the added broadband capacity for reasonably-anticipated demand in the upcoming funding year, it qualifies for E-rate support. The ESL should not send a conflicting message by flatly denying funding for these additional circuits or additional bandwidth.

- b. We support the limitation that Category 1 funding should be limited to equipment “necessary to make a broadband service functional.” Attempting to define this language more specifically, as some parties have suggested, could create more confusion than it will solve. As noted above, different manufacturers have different terminology and definitions of those terms; identifying specific types of transmission equipment could encourage applicants toward one provider over another if their terminology happens to match the ESL’s chosen language. Applicants may feel the need to “shoehorn” their Category 1 equipment purchases into specific language set forth by the ESL, which will create further confusion and threaten the integrity of the definition. A prescriptive definition could also lead to questions and perhaps denials by USAC, when the purpose of allowing the purchase of equipment under Category 1 is to allow applicants to consider self-provisioning on equal terms with other services. The FCC has articulated this “necessary to make a broadband service functional” test in the E-rate fiber workshop held on May 20, 2015, and we suggest this standard is the best way to balance the need to provide guidance to applicants without being unduly prescriptive.³

- c. The 2016 draft ESL says on p. 2: “Digital transmission services and Internet access services are eligible in Category One. These services include:”. The language in the 2014 and

³ At the same time, we agree that the applicants should not be permitted to shift Category 2 (internal connections) equipment into Category 1. In other words, the on-premise Priority 1 equipment must be an integral component of the telecommunications or Internet access service, and the treatment of equipment for use with dark fiber or self-provisioned networks should be on par with the treatment of equipment for leased services.

previous ESLs said: "Eligible digital transmission technologies include, **but are not limited to:**" (emphasis added). We suggest that the FCC should add this bolded language to the 2016 ESL to make it readily apparent that this list is just meant to provide examples of digital transmission technologies and is not all-inclusive. We agree with SECA that the ESL was always meant to be illustrative and not all-inclusive. Adding this short phrase also reinforces the neutral, non-prescriptive nature of the E-rate program.⁴

- d. Similarly, we agree with Education Superhighway that the list of Category 2 services should "accommodate the wide variety of approaches currently available in the marketplace, leaving applicants the flexibility to choose the solution that will work best for them . . ."
- e. The ESL proposes to include "Leased Lit Fiber", "Dark Fiber", and "Self-Provisioned Broadband Networks" as eligible services under Category 1. Some parties, however, have proposed to simplify the list by dropping the references to dark fiber and self-provisioned networks in the list of eligible Category 1 services, even though the 2014 E-rate Orders specifically allowed dark fiber and self-provisioned services to be E-rate eligible. Dropping these terms from the list of eligible services may send a confusing message to applicants that dark fiber and self-provisioned networks are no longer eligible. Self-provisioning and dark fiber should remain listed specifically on the list of eligible Category 1 services.
- f. We agree with several commenters – such as SECA – that say it would be helpful to provide additional clarification about how to compare the total cost of ownership when reviewing the costs of dark fiber, lit fiber and self-provisioned services. But we disagree with the comments of USTelecom and Unite Private Networks that self-provisioning should only be allowed as a "last resort." The current burden on E-rate applicants is already significant – criteria for decision-making for the 470 already exists and these criteria should not be any different for new technologies or options. Setting a different standard for certain options would increase the burden on applicants and could discourage them from using the most cost-effective technology. Furthermore, placing self-provisioning or dark fiber as a last resort would undo the decision in the December E-rate Order that self-provisioning and dark fiber should be treated equally with lit fiber.⁵ The FCC should not allow USTelecom and Unite Fiber Networks to use the ESL as an opportunity to make a fundamental policy change

⁴ We thus disagree with USTelecom's suggestion that "The presumption should remain against eligibility whenever a service or component is not on the ESL, absent other specific guidance from the Commission or USAC."

⁵ Unite Fiber Networks and USTelecom have raised this "last resort" argument, even though the Public Notice (in footnote 2) specifically asked parties not to address issues raised in the reconsideration petitions when commenting on the ESL.

that was already decided in December 2014 and that is currently the subject of a separate Petition for Reconsideration.⁶

Respectfully Submitted,

A handwritten signature in black ink that reads "John Windhausen, Jr." with a stylized, cursive script.

John Windhausen, Jr.

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⁶ The SHLB Coalition filed comments in Opposition to Cox's Petition in this proceeding on April 29, 2015.