

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)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Modernizing the E-rate Program for)	WC Docket No. 13-184
Schools and Libraries)	

ORDER

Adopted: October 28, 2014

Released: October 28, 2014

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) releases the eligible services list (ESL) for funding year 2015 for the schools and libraries universal service support program (more commonly referred to as the E-rate program)¹ and authorizes the Universal Service Administrative Company (USAC) to open the annual application filing window no earlier than December 29, 2014.² In this Order, we adopt the proposals made in the *ESL Public Notice*, with modifications as described herein.³ In so doing we streamline the structure of the ESL to provide guidance on the services the Commission found to be eligible for E-rate support in the recent *E-rate Modernization Order*.⁴

II. BACKGROUND

2. Sections 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Communications Act collectively grant the Commission authority to specify the services that will be supported for eligible schools and libraries and to design the specific mechanisms of support.⁵ Pursuant to this authority, in the *E-rate Modernization Order*, the Commission made the following changes to the eligible services framework of

¹ See *Schools and Libraries Universal Service Support Mechanism, Eligible Services List for Funding Year 2015* (rel. October 28, 2014) (2015 ESL) (Appendix C). The ESL specifies the services and products that are eligible for E-rate discounts.

² 47 C.F.R. § 54.502(d) (requiring the final ESL to be released at least 60 days prior to the opening of the application filing window).

³ *Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program*, CC Docket No. 02-6, GN Docket No. 09-51, WC Docket No. 13-184, Public Notice, 29 FCC Rcd 9474 (Wireline Comp. Bur. 2014) (*ESL Public Notice*).

⁴ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 29 FCC Rcd 8870 (2014) (*E-rate Modernization Order*).

⁵ 47 U.S.C. §§ 254(c)(1), 254(c)(3), 254(h)(1)(B), 254(h)(2). See also *E-rate Modernization Order*, 29 FCC Rcd at 8895-98, paras. 67-75.

the E-rate program: (1) restructured the former Priority One and Priority Two categories into Category One and Category Two; (2) eliminated Category One (former Priority One) support for outdated, legacy, and other non-broadband services including web hosting, email, and paging; (3) adopted a phase out of support for Category One voice services; and (4) limited Category Two support to the internal connections needed to enable high-speed broadband connectivity within schools and libraries, specifically LAN/WLAN (local area networks/wireless local area networks)-focused components (broadband internal connections components), basic maintenance of eligible broadband internal connections components, and managed internal broadband services.⁶

3. In the *ESL Public Notice*, we sought comment on revisions to the ESL for funding year 2015 that would streamline the ESL, implement the decisions made by the Commission in the *E-rate Modernization Order* to restructure the ESL, and eliminate services and components specifically identified by the Commission.⁷ We also sought comment on defining caching and allowing applicants to seek E-rate funding for installation from vendors that are different from the vendors of the eligible equipment to be installed.⁸ The comment cycle closed on September 18, 2014.⁹

III. DISCUSSION

4. Upon consideration of the record, we adopt most of the formatting and substantive changes to the ESL proposed in the *ESL Public Notice*, with some alterations as described herein. We make these changes to clarify for applicants and vendors what services are eligible for E-rate support and certain conditions for eligibility, and to guide USAC in implementing the *E-rate Modernization Order*.

A. ESL Format and Content

5. Consistent with the Commission's decisions in the *E-rate Modernization Order*, the 2015 ESL renames the Priority One section as Category One and the Priority Two section as Category Two and, as discussed in detail below, identifies those services that are now eligible for Category One and Category Two support.¹⁰ We also adopt the streamlined approach to the ESL proposed in the *ESL Public Notice*.¹¹ We agree with commenters that past versions of the ESL were too long, difficult to understand, and confusing to work with.¹² Therefore, unlike previous ESLs, the 2015 ESL does not include the ESL Glossary, Special Eligibility Conditions, and list of ineligible services that had been posted at the end of each category of service.

6. Some commenters expressed concern about uncertainty among some applicants regarding services that are no longer eligible for E-rate support. To address that possibility, we include as Appendix B to this order a chart identifying the equipment and services that were eligible for E-rate support in

⁶ *E-rate Modernization Order*, 29 FCC Rcd at 8895-98, paras. 67-75, 8898-99, para. 77, 8917-19, paras. 119-124, 8920-21, para. 130, 8922-33, paras. 135-153.

⁷ *ESL Public Notice*, 29 FCC Rcd at 9474-75.

⁸ *Id.* at 9475-77.

⁹ *Id.* at 9474.

¹⁰ *E-rate Modernization Order*, 29 FCC Rcd at 8898-99, para. 77, 8917-21, paras. 119-130, 8922-32, paras. 135-150.

¹¹ For example, we merge the list of eligible "Digital Transmission Services" and "Internet Access" services that had been separated in previous ESLs into one box in Category One.

¹² See North Carolina Department of Education Comments at 1 (previously published long lists that also included ineligible products and services, the Special Eligibility Considerations section, and the glossary of terms tended to get confusing and virtually impossible for applicants and vendors alike to understand); Wisconsin Department of Public Instruction Comments at 1 (agreeing with and finding useful the focus on listing only what services are eligible – as opposed to listing both ineligible and eligible services).

funding year 2014, but are no longer eligible as of funding year 2015.¹³ The chart does not identify services that were previously ineligible and will remain ineligible for 2015.

7. To provide further guidance for applicants and vendors, we direct USAC to include an ESL Glossary on its webpage.¹⁴ Although some commenters suggest we specify eligibility conditions in the ESL to allow the ESL to serve as a hub for past Bureau and Commission decisions on eligibility and related determinations,¹⁵ doing so goes beyond the core purpose of the ESL which is to facilitate the ability of both vendors and applicants to determine what services are eligible for discounts.¹⁶ The ESL is not intended to serve as the central collection for all E-rate program rules and policies. Even the current ESL is not dispositive of all of the precedent related to E-rate program eligibility. It would be inappropriate to leave applicants and service providers with the impression that the ESL is a comprehensive source of all information pertaining to E-rate eligibility. As we have emphasized, applicants and service providers are required to know the relevant rules of the E-rate program and are ultimately responsible for compliance with them.¹⁷

B. Eligibility Changes in the *E-rate Modernization Order* and Additional Clarifications

8. We also adopt the substantive changes to the ESL proposed in the *ESL Public Notice* based on the direction provided by the Commission in the *E-rate Modernization Order*, and provide some additional information to address comments we received in response to the *ESL Public Notice*.

1. Category One

9. The ESL first identifies the Category One telecommunications services, telecommunications, and Internet access services for which E-rate applicants may seek support. Category One services are listed in the entries for digital transmission services and Internet access services, and voice services. Pursuant to the *E-rate Modernization Order*, we remove from the ESL web hosting, voice mail, email, paging, directory assistance charges, text messaging, custom calling services, direct inward dialing, 900/976 call blocking, and inside wire maintenance plans.¹⁸ In response to requests from commenters,

¹³ See, e.g., SECA Comments at 2 (the funding year 2015 ESL should note services that were eligible in funding year 2014 but are no longer eligible); North Carolina Department of Education Comments at 2; Wisconsin Department of Public Instruction Comments at 1.

¹⁴ See, e.g., New York City Department of Education Comments at 2 (there is value to retaining some of the removed guidance on the USAC website, such as the ESL glossary, even if it can only be used for informational assistance).

¹⁵ See, e.g., Affiniti Comments at 1 (stating that the ESL should be a clear and comprehensive guide to the procedural and substantive requirements of the program and that because many areas of E-rate policy are not reflected in Commission rules but were developed through common law precedent, the current ESL provides many explanatory notes, definitions, and summaries).

¹⁶ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26929, para. 40 (2003) (*Schools and Libraries Third Report and Order*) (deciding that the formalized process for releasing the ESL will simplify program administration and facilitate the ability of both vendors and applicants to determine what services are eligible for discounts).

¹⁷ See, e.g., *Request for Review or Waiver of a Decision of the Universal Service Administrator by RECtec Technology and Communications (Colcord Public Schools), Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 8180 (Wireline Comp. Bur. 2014); *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-394, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684 (Wireline Comp. Bur. 2010) (denying appeals wherein the appellant claimed that E-rate violations resulted from the lack of awareness of E-rate rules).

¹⁸ *E-rate Modernization Order*, 29 FCC Rcd at 8928-32, paras. 144-150.

we also clarify in the ESL that multi-protocol label switching (MPLS) is eligible for Category One E-rate support and explain that telecommunications transmission and Internet access used for distance learning and video conferencing remains eligible.

a. Multi-Protocol Label Switching (MPLS)

10. In response to comments we received,¹⁹ we add MPLS to Category One in order to clarify that MPLS is eligible for Category One E-rate support. MPLS allows providers to create a single integrated network infrastructure that can be used to provide multiple services to the enterprise customer, and many service providers use MPLS in their networks to facilitate Internet protocol (IP) transport.²⁰ Although MPLS was not specifically identified as supported on previous ESLs, USAC treated MPLS as an eligible transport service because MPLS is a reasonable extension of the existing specified list of eligible transmission services by allowing service providers to create end-to-end circuits across any type of transport medium, using any protocol.²¹ Past ESLs explained that eligible digital transmission technologies and basic conduit Internet access “include, but are not limited to . . .” the specifically identified services, providing flexibility to fund substantially similar transport services that may not yet have been identified by name on the ESL.²² Clarifying that MPLS as one of the eligible Category One services is akin to the Commission’s decision in 2009 to add Ethernet to the ESL as an eligible digital transmission service, while recognizing that USAC appropriately funded Ethernet in previous years as a Priority One service.²³

11. Consistent with the Commission’s goal of ensuring “access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries,” we recognize the need for

¹⁹ See, e.g., E-mpa Comments at 5; SECA Comments at 5; Verizon Reply Comments at 2.

²⁰ Wireline Competition Bureau Evaluation of Rural Health Care Pilot Program Staff Report, WC Docket No. 02-60, 27 FCC Rcd 9387, 9413, para. 45, n.133 (Wireline Comp. Bur. 2012), citing Telecommunications Industry Association, *2012 ICT Market Review and Forecast*, at 3-8, 3-40 (noting that carriers are converting to MPLS in their core networks to facilitate IP transport, that MPLS-enabled networks can establish different classes of services and offer guarantees of service without dedicated circuits, and that carriers charge less for MPLS than for other technologies because the costs for provisioning and supporting it are lower).

²¹ See Multiprotocol Label Switching, http://en.wikipedia.org/wiki/Multiprotocol_Label_Switching (last visited Oct. 28, 2014).

²² See, e.g., *Schools and Libraries Universal Service Support Mechanism/A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 28 FCC Rcd 14534, 14536-38 (Wireline Comp. Bur. 2013) (*2014 ESL and Order*).

²³ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 6562, para. 21 (2009) (although it was not specifically listed in the ESL for funding year 2009, Ethernet is a type of digital transmission service that has been eligible for E-rate discounts when purchased as a Priority 1 telecommunications service). Clarifying that MPLS is on the list of Category One services does not pre-judge the treatment of MPLS for any other proceeding that is before the Bureau or Commission. See, e.g., *Wireline Competition Bureau Seeks Comment on IVANS, Inc., Request for Review of a Decision by the Universal Service Administrative Company and Petition for Declaratory Ruling*, WC Docket No. 06-122, Public Notice, 28 FCC Rcd 12271 (Wireline Comp. Bur. 2013). We need not state definitively whether MPLS or components thereof are considered telecommunications services or advanced information services, nor would such a determination be within the scope of this proceeding. For purposes of the E-rate program, applicants need only seek funding for MPLS based on the type of provider they select to provide the service. See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18766-67, para. 9 (2010) (*Schools and Libraries Sixth Report and Order*) (providing directions to applicants regarding selecting the appropriate category of service for dark fiber on the FCC Form 471). If they select a telecommunications carrier to provide MPLS, they should select the telecommunications service category on the FCC Form 471. *Id.* n.14. In all other cases, the applicant should select the Internet access category on the form. *Id.*

flexibility in providing support for services that facilitate high-speed connectivity.²⁴ Therefore, we rephrase the wording proposed for the introduction to digital transmission and Internet access services to read “Digital transmission services and Internet access services are eligible in Category One. These services include: . . .” to indicate that there may be other high-speed broadband services that fall within the rubric of eligible digital transmission and Internet access services. With the addition of MPLS, we conclude that the ESL should cover all or most of the services, physical media, and technologies sought by applicants for high-speed data transmission and Internet access. However, we direct USAC to bring to our attention for our or the Commission’s consideration any high-speed services put forth in applicant funding requests that may not specifically be listed or covered by one of the terms on the list of eligible Category One services.

b. Telecommunications and Internet Access Used for Distance Learning

12. Consistent with the draft ESL, we decline to include in the current ESL language that was in previous ESLs explaining that telecommunications and Internet access used for distance learning, video conferencing, and interactive television (often referred to individually and collectively as distance learning), are eligible for E-rate funding. Telecommunications transmission used for distance learning has been eligible from the start of the E-rate program.²⁵ In 2007, the Commission specified that basic conduit access to the Internet for the purpose of accessing distance learning and video conferencing service is eligible.²⁶

13. We removed the language pertaining to distance learning and video conferencing from the draft ESL because we view this as language that provides an example of an eligible educational purpose – *i.e.*, for accessing distance learning, rather than identifying an eligible service itself. Distance learning is important for education, especially in remote areas where there may be a lack of qualified teachers and educational resources. However, we find it unnecessary to label distance learning as a valid educational purpose for seeking telecommunications transmission or Internet access services over other important educational purposes, such as student online research or access to educational videos or other content. We disagree with those commenters that express concern over removal of this explanation because we do not view this as a change in the status of funding eligibility for telecommunications transmission or Internet access used for distance learning.²⁷ Although no longer highlighted in the ESL itself, telecommunications transmission and Internet access used for these purposes remains eligible. We also caution applicants that only the underlying transmission providing access to distance learning, video conferencing and interactive television are eligible, and that all of the components that have been ineligible in prior years remain ineligible including non-telecommunications components such as

²⁴ *E-rate Modernization Order*, 29 FCC Rcd at 8881, para. 26. In the *E-rate Modernization Order* the Commission began to transition E-rate support to focus specifically on those telecommunications and information services necessary to support broadband to and within schools and libraries. *E-rate Modernization Order*, 29 FCC Rcd at 8896, para. 70 (stating that the Commission has long supported these types of services, and that section 254(c)(1) and (c)(3) each provide ample authority for the support of broadband telecommunications services, and sections 254(c)(3), (h)(1)(B), and (h)(2) provide authority to support advanced telecommunications and information services).

²⁵ In some funding years, the ESL indicated that “distance learning circuits” were eligible if provided as a telecommunications service. *See, e.g., Release of Funding Year 2005 Eligible Services List for Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Public Notice, 19 FCC Rcd 20221 (2004).

²⁶ *See Release of Funding Year 2008 Eligible Services List for Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Public Notice, 22 FCC Rcd 18751 (2007) (*2008 ESL*).

²⁷ *See, e.g., SECA Comments at 2; North Carolina Department of Education Comments at 2; General Communication, Inc. Reply Comments at 1-4.*

scheduling services, services for creation, maintenance and storage of content, and charges for distance learning or video conferencing utilities such as web meetings or online collaboration solutions.²⁸

2. Category Two

14. The 2015 ESL reflects the Commission's determination in the *E-rate Modernization Order* that Category Two support should be limited to LAN/WLAN (local area networks/wireless local area networks)-focused components (called "broadband internal connections components" on the ESL), basic maintenance of eligible broadband internal connections components, and managed internal broadband services. The eligible broadband internal connections components are:²⁹ routers, switches, wireless access points;³⁰ antennas, cabling, connectors, and related components used for internal broadband connections; racks; wireless controller systems; firewall services and components;³¹ uninterruptible power supply/battery backup; software supporting each of these components; and caching. The components that are no longer eligible for E-rate support include all components listed in the entries for Circuit Cards/Components, Storage Devices, Telephone Components, and, Video Components.³² Voice over IP and video IP components are also ineligible.³³ All components that had been in the entry Data Protection except for firewall and uninterruptible power supply/battery back-up are ineligible.³⁴ All components that had been listed in the entry for Interfaces, Gateways, Antennas are ineligible except for antennas that are integral to LAN or WLAN internal broadband networks.³⁵ All components that had been listed in the entry for Servers are ineligible except those servers necessary for the provision of caching.³⁶ All components that had been listed in "Software" are ineligible except for software that supports each of the eligible broadband internal connections components identified by the Commission as eligible for E-rate support.³⁷ The 2015 ESL does not alter the eligibility of basic maintenance, but adds managed internal broadband services to Category Two to allow applicants to seek services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections components.³⁸

15. The Commission also found that caching should be eligible as a Category Two service and delegated authority to the Bureau to define caching for purposes of E-rate support.³⁹ Upon consideration of the record, we adopt a definition of caching for funding year 2015. In response to comments, we also

²⁸ See, e.g., 2008 ESL.

²⁹ *E-rate Modernization Order*, 29 FCC Rcd at 8917, paras. 119-120.

³⁰ Because the *E-rate Modernization Order* instructs that the eligible core components of broadband internal connections are the ones that help deploy LANs and WLANs, the ESL will indicate that access points used in a LAN or WLAN environment are eligible. *E-rate Modernization Order*, 29 FCC Rcd at 8917, para. 119.

³¹ Although the *E-rate Modernization Order* indicated eligibility for "firewall services", we list "firewall services and equipment" on the ESL because there may be practical reasons for applicants to seek firewall components only. *E-rate Modernization Order*, 29 FCC Rcd at 8917, para. 119. There is no implication in the Commission's decision that the use of the term "firewall services" was meant to preclude such flexibility.

³² *E-rate Modernization Order*, 29 FCC Rcd at 8917, para. 120.

³³ *Id.* Voice over IP and video IP components had been listed in the entry for Data Distribution.

³⁴ *E-rate Modernization Order*, 29 FCC Rcd at 8917, para. 120.

³⁵ *Infra* para. 17.

³⁶ *E-rate Modernization Order*, 29 FCC Rcd at 8917, n.271.

³⁷ *Id.* at 8917, paras. 119-120.

³⁸ *Id.* at 8918-20, paras. 122-129.

³⁹ *Id.* at 8920-21, paras. 130-131.

clarify the extent to which antennas are eligible for E-rate support. We also clarify the eligibility for installation performed by a vendor that is separate from the vendor providing an internal connection. Finally, we reject a proposal from commenters that we extend the maximum length of time for manufacturers' warranties from three years to five years.

a. Caching

16. Upon consideration of the record, we adopt an ESL definition of caching that is based on previous ESL definitions of caching.⁴⁰ We define caching as “a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if it must be transmitted across a network from a distance.”⁴¹ A caching service, or caching equipment or components, including servers that provide caching, are eligible for funding.⁴² In the *E-rate Modernization Order*, the Commission recognized that caching can serve to optimize network resources and potentially result in more efficient use of E-rate funding.⁴³ Therefore, our objective in this proceeding is to define caching in a way that provides applicants with ample flexibility to purchase the caching services, technology or components that best optimizes their network resources and results in more efficient use of E-rate funds. A few commenters provided recommendations for a caching definition and on the breadth of services and equipment that should be supported as part of caching.⁴⁴ The definition we adopt today reflects the intent and character of the commenters' recommendations while allowing applicants maximum flexibility to select the caching solution most appropriate for their individual needs. The definition of caching is listed in the 2015 ESL in the “notes” following the list of eligible internal broadband components. We remind applicants that in the *E-rate Modernization Order*, the Commission determined, as it did for the core components of broadband internal connections, that equipment that combines caching functionality with other eligible functionalities is eligible but that equipment that combines caching functionality with an ineligible functionality must be cost allocated.⁴⁵

b. Antennas

17. Upon consideration of the record, we clarify the eligibility of antennas. Antennas used in and in conjunction with the internal connections needed to enable high-speed broadband connectivity within schools and libraries, are eligible. In the *E-rate Modernization Order*, the Commission was clear in its support for funding internal broadband connections.⁴⁶ It indicated that some components that had been listed in the ESL under Priority Two may be relocated or described in updated or more generic terminology in the 2015 ESL.⁴⁷ It stated that, for example the ESL entry for “Interfaces, Gateways, Antennas” names some components in outdated terms such as “bridges”, or terms such as “cable modem” that are interchangeable or subsumed by other components such as “routers” or “switches” and remain

⁴⁰ See *2014 ESL and Order*, 28 FCC Rcd at 14563 (providing a definition of “caching” and “caching service”).

⁴¹ *Id.*

⁴² Previous ESLs defined a “caching service” as a special high-speed storage mechanism at the border of a network and the Internet that holds frequently accessed Internet information, thereby reducing retrieval times for information often requested from the Internet. See, e.g., *Schools and Libraries Universal Service Support Mechanism/A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Report and Order, 27 FCC Rcd 11348, 11386 (Wireline Comp. Bur. 2012); *2014 ESL and Order*, 28 FCC Rcd at 14563.

⁴³ *E-rate Modernization Order*, 29 FCC Rcd at 8920-21, para. 130.

⁴⁴ See e.g., E-mpa Comments at 8-9; SAFARI Comments at 5; E-rate Provider Services Comments at 3. See also New York City Department of Education Comments at 2; EducationSuperHighway Comments at 2.

⁴⁵ *E-rate Modernization Order*, 29 FCC Rcd at 8921, para. 130.

⁴⁶ *Id.* at 8898-99, para. 77, 8917-18, paras. 119-121.

⁴⁷ *Id.* at 8917-8918, para. 120.

eligible for E-rate funding in funding year 2015 under the newer or more generic terminology.⁴⁸ Similarly, we agree with commenters that antennas that are an integral part of the LAN or WLAN are eligible for Category Two funding, because they are subsumed by or essential to the components necessary to distribute internal broadband services within a school or library.⁴⁹ We add antennas to the list of eligible internal broadband components. Clarifying the list of Category Two components to include antennas is a logical extension of the Commission's decision in the *E-rate Modernization Order* to fund distribution components such as cabling, connectors and similar distribution equipment.⁵⁰

c. Installation

18. We also take the opportunity to clarify the ESL to allow for E-rate funding for installation of equipment that is provided separately, and may be in a separate contract or bid, from the equipment itself. The ESL removes phrasing from the "Installation, activation, and initial configuration" description that had indicated that installation must be part of a contract or bid for the components.⁵¹ In some cases, it might be preferable and more cost effective for applicants to have installation services as part of the same contract or bid for the components to be installed. However, commenters strongly suggest that requiring applicants to use the same vendor for the equipment and installation in some instances is cost prohibitive. For example, there are some schools and libraries, especially in rural areas, that do not have local or regional equipment manufacturers that both sell and install networking equipment. These entities often need flexibility to contract with local firms to provide installation that is separate from the equipment. Also, schools and libraries often purchase equipment from a manufacturer or reseller online, have it drop-shipped, and then contract for installation with a local firm.⁵² Therefore rigid application of the previous ESL language regarding installation could result in prohibiting some applicants from being able to select the most cost effective service offering as required by the Commission's rules.⁵³ We modify the language of the ESL to clarify that it does not bar applicants from purchasing equipment and separately securing installation of that equipment. For many schools and libraries, this may be the most cost effective approach to obtaining needed equipment and components.⁵⁴

d. Manufacturers' Warranties

19. We decline to modify the ESL to make manufacturers' warranties that are longer than three years eligible for E-rate support. Two commenters recommend providing E-rate support for manufacturers' warranties that are as long as five years.⁵⁵ To do so would be beyond the scope of the Bureau's authority. In 2010, the Commission considered the eligibility of manufacturers' warranties and specifically found that, "A manufacturer's multi-year warranty for a period up to three years and provided

⁴⁸ *Id.* at 8918 n.274.

⁴⁹ *See, e.g.*, E-mpa Comments at 7-8; PSC Group Comments at 1.

⁵⁰ *E-rate Modernization Order*, 29 FCC Rcd at 8917, para. 119.

⁵¹ *See 2014 ESL and Order*, 28 FCC Rcd at 14554.

⁵² *See, e.g.*, Comments of State E-rate Coordinators Alliance to Public Notice (DA 13-1513) Draft Eligible Services List for Schools and Libraries Universal Service Program, CC Docket No. 02-6, at 5 (filed Aug. 2, 2013) (stating that schools and libraries often purchase the equipment from the manufacturer or reseller online and have it drop-shipped, and then contract with a local firm to perform the installation).

⁵³ 47 C.F.R. § 54.511(a).

⁵⁴ *See, e.g.*, E-mpa Comments at 7; SECA Comments at 4; Funds for Learning Comments at 8; Florida Department of Management Services Comments at 4.

⁵⁵ Brocade Comments at 5; ENA Comments at 2.

as an integral part of an eligible component without separately identifiable cost can be included in the cost of the component.”⁵⁶ The 2015 ESL will continue to use this language.

20. We make no other changes to the ESL for funding year 2015 because the primary focus of this proceeding is implementing the specific eligibility decisions of the Commission in the *E-rate Modernization Order*. Although some commenters in this proceeding recommended additional clarifications,⁵⁷ requested that we add certain services to the list, or that we reexamine the Commission’s decisions in the *E-rate Modernization Order*,⁵⁸ we decline to address or consider these requests at this time. Reexamination of the recent Commission decisions in the *E-rate Modernization Order* is outside the scope of this proceeding.⁵⁹

IV. ORDERING CLAUSE

21. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154,

⁵⁶ In the *Schools and Libraries Sixth Report and Order*, the Commission addressed a perceived misunderstanding about the eligibility of manufacturers’ warranties. *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18809-10, para. 108. The Commission agreed with commenters in that proceeding that the eligibility of a manufacturer’s warranty meeting this description should be limited to three years. *Id.* This clarification of the three year period was included in the ESL. *Id.* at 18853.

⁵⁷ See, e.g., E-mpa Comments at 4 (provide guidance on how associated surcharges and fees should be allocated and how bundled products should be cost allocated to ease administrative burdens); SECA Comments at 4 and C Spire Reply Comments at 2-3 (clarify when, or if, cost allocation of broadband circuits is required depending on how broadband circuits are used; SECA believes that it is the Commission’s intent to promote, without penalty, the shared use of broadband for numerous applications, including voice); E-mpa Comments at 11 and Mitel Comments at 6 (applicants should not have to cost allocate voice services from integrated or bundled services that include data, video, and voice components because “voice” is not billed separately for these services and it will be difficult for applicants to separate costs); Funds for Learning Comments at 2-5 (cost allocation will occupy more of applicants’ time as technologies become more integrated and can also penalize purchasers of “future-proof” equipment that provide more integrated features); North Carolina Department of Education Comments at 2 and Verizon Reply Comments at 5 (instead of requiring cost allocation, telephone components such as voice mail, direct inward dialing, inside wire maintenance, and related services should be subject to the annual 20 percentage point phase out); EducationSuperHighway Comments at 3 (retain a simplified version of the explanatory language from the FY2014 ESL to help applicants with complicated topics such as cost allocation).

⁵⁸ See, e.g., EducationSuperHighway Comments at 3 (remove items no longer generally offered on the market such as Telephone Dial-Up, Fractional T-1s (for data), and SMDS); ENA Comments at 1-2 (renew eligibility of voicemail, direct inward dialing and 900/976 service and make them subject to phase out with other voice services); ENA Comments at 2 (allow caching as an eligible part of a Category One Internet access service because many ISPs offer cloud-based caching that manages the amount of bandwidth needed to deliver broadband solutions); AdTec Comments at 1 (requiring applicants to deduct text messaging, directory assistance, custom calling services, direct inward dialing, 900/976 call blocking, and inside wire maintenance as part of Category One telephone service components increases administrative burdens; because of the marginal cost of these services and there is inconsistency among service providers in listing them as line items on their monthly invoices or as part of a bundled service, these services should remain eligible).

⁵⁹ We note that the Commission has several petitions for reconsideration and/or clarification of the *E-rate Modernization Order* pending before it, and those petitions raise some of the same issues which we decline to address here. See, e.g., Petition of Verizon for Reconsideration And/Or Clarification, WC 13-184, at 4 (filed Sept. 18, 2014) (urging the Commission to clarify and provide guidance on how to compare a “wireless local area network solution” with wireless data plans that do not merely provide connectivity within the school building but also provide external connectivity to the Internet); Petition for Reconsideration or Clarification of the West Virginia Department of Education, WC 13-184, at 3-4 (filed Sept. 18, 2014) (recommending that telephone components be treated as part of normal voice services so that they may be phased out as part of the annual 20 percentage point phase out for voice services).

254, 303(r), and 403, and sections 0.91 and 54.502 of the Commission's rules, 47 C.F.R. §§ 0.91 and 54.502, this Order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

APPENDIX A

List of Commenters

Comments and Reply Comments in Response to the
ESL Public Notice

CC Docket No. 02-6; GN Docket No. 09-51; WC Docket No. 13-184

Commenters

- | | | |
|-----|-------------------------------------|---|
| 1. | AdTec | Telecommunications Council and the |
| 2. | ADTRAN, Inc. | Rainbow Push Coalition (MMTC) |
| 3. | Affiniti | 21. NetDiverse |
| 4. | Bridger Partners | 22. New York City Department of |
| 5. | Brocade Communications | Education |
| 6. | Buonassissi, Henning & Lash | 23. North Carolina Department of |
| 7. | Education Networks of America (ENA) | Education |
| 8. | EducationSuperHighway | 24. Pat Cassella |
| 9. | E-Rate Management Professionals | 25. Randy Gibbs |
| | Association (E-mpa) | 26. Safari Montage (Safari) |
| 10. | E-Rate Provider Services | 27. Sprint Corporation (Sprint) |
| 11. | Florida Department of Management | 28. State E-rate Coordinators' Alliance |
| | Services | (SECA) |
| 12. | Funds for Learning | 29. The PSC Group |
| 13. | Information Transport Solutions | 30. Urban Libraries Council |
| 14. | James Idol | 31. Wisconsin Department of Public |
| 15. | Jim Cox | Instruction |
| 16. | Jim White | |
| 17. | Joe St. Sauver | |
| 18. | MetComm.Net | |
| 19. | Mitel Netsolutions | |
| 20. | Minority Media and | |

Reply Commenters

1. Alcatel-Lucent
2. Ericsson
3. General Communication, Inc.
4. Kellogg & Sovereign® Consulting, LLC
5. LGBT Technology Partnership
6. National Association of State Chief Information Officers
7. NTCA–The Rural Broadband Association
8. Philip B. Gieseler
9. Telepak Networks, Inc. and Cellular South, Inc. (C Spire)
10. TV Band Service, LLC
11. Verizon

APPENDIX B

Services and Components No Longer Eligible for Support (Effective Funding Year 2015)⁶⁰

Category One (Priority One)	Category Two (Priority Two)
<p>Services and telephone components that were listed as eligible in the former Priority One category:</p> <ul style="list-style-type: none"> • 900/976 call blocking • custom calling services • direct inward dialing • directory assistance charges • email • inside wire maintenance plans • paging • text messaging • voice mail • web hosting 	<p>Components included in these former Priority Two entries:</p> <ul style="list-style-type: none"> • Circuit Cards/Components • Data Protection (all except for firewall and uninterruptible power supply/battery back-up) • Interfaces, Gateways, Antennas (other than as specified in this Order) • Servers (other than servers necessary for caching) • Software (other than the software that supports eligible broadband internal connections) • Storage Devices • Telephone Components • Video Components • Voice/video IP components (that had been listed in the Data Distribution entry)

⁶⁰ This list does not include the services and products that were ineligible in funding year 2014 and previous years. Unless these services were specifically added to the ESL for funding year 2015, these services remain ineligible.

APPENDIX C

Eligible Services List for Funding Year 2015

Schools and Libraries Universal Service Support Mechanism – Eligible Services List

(WC Docket No. 13-184; CC Docket No. 02-6; GN Docket No. 09-51)

The Federal Communications Commission’s (FCC’s) rules provide that all services that are eligible to receive discounts under the Schools and Libraries Universal Service Support Mechanism (otherwise known as the E-rate program or “E-rate”) are listed in this Eligible Services List (ESL). The E-rate program is administered by the Universal Service Administrative Company (USAC). The E-rate program provides eligible schools and libraries discounts for eligible services and components. This ESL identifies the Category One telecommunications services, telecommunications, and Internet access services and Category Two internal connections, basic maintenance, and managed internal broadband services, for which eligible applicants may seek E-rate support. 47 C.F.R. §§ 54.5, 54.500, and 54.502(a).

Additional guidance from USAC about the E-rate application process and about eligible services, including a glossary of terms, is available at USAC’s website at <http://www.usac.org/sl/>. Those documents on USAC’s website are not incorporated by reference into the ESL and do not bind the Commission. Thus, they will not be used to determine whether a service or product is eligible. Applicants and service providers are free to refer to those documents, but just for informal guidance. This ESL, dated October 28, 2014, implements changes adopted in the *E-rate Modernization Order* (FCC 14-99), and therefore represents a change from prior funding years. This ESL applies to funding requests for Funding Year 2015.

Category One

The first category of supported services, Category One, includes the services needed to support broadband connectivity to schools and libraries. Category One lists the telecommunications services, telecommunications, and Internet access services for which E-rate applicants may seek discounts. Eligible Category One services are listed in the entries for digital transmission services and Internet access services, and voice services. This category consists of the services that provide broadband to eligible locations including data links that connect multiple points, services used to connect eligible locations to the Internet, and services that provide basic conduit access to the Internet. Maintenance and technical support appropriate to maintain reliable operation are eligible for support when provided as a component of these services. Voice services, as described below, are subject to a phase down of support beginning in funding year 2015. Applicants must identify the Category One service type on the FCC Form 471, as telecommunications services, Internet access, or voice.

Digital transmission services and Internet access services.

Digital transmission services and Internet access services are eligible in Category One. These services include:

- Asynchronous Transfer Mode (ATM)
- Broadband over Power Lines
- Cable Modem
- Digital Subscriber Line (DSL)
- DS-1 (T-1), DS-3 (T-3), and Fractional T-1 or T-3
- Ethernet
- Fiber (Lit and Dark)
- Frame Relay
- Integrated Services Digital Network
- Multi-Protocol Label Switching (MPLS)
- OC-1, OC-3, OC-12, OC-n
- Satellite Service
- Switched Multimegabit Data Service
- Telephone dial-up
- Wireless services (e.g., microwave)

Data plans and air cards for mobile devices are eligible only in instances when the school or library seeking support demonstrates that the individual data plans are the most cost-effective option for providing internal broadband access for mobile devices as required in the *E-rate Modernization Order*.

Off-campus use, even if used for an educational purpose, is ineligible for support and must be cost allocated out of any funding request.

Eligible voice services.

Eligible voice services are subject to an annual 20 percentage point phase down of E-rate support beginning in funding year 2015, as described in the *E-rate Modernization Order*. The reduced discount rate for voice services will apply to all applicants and all costs for the provision of telephone services and circuit capacity dedicated to providing voice services including:

- Centrex
- Interconnected voice over Internet protocol (VoIP)
- Local, long distance, and 800 service, e.g., a toll-free telephone number for students to contact school regarding questions about homework
- Plain old telephone service (POTS)
- Radio loop
- Satellite telephone service
- Shared telephone service (only the portion of the shared services relating to the eligible use and location may receive discounts)
- Wireless telephone service including cellular voice and excluding data and text messaging

Eligibility limitations for certain Category One services:

Fiber – E-rate support is available for leased lit and dark fiber as described in the *Schools and Libraries Sixth Report and Order* (FCC 10-175) and the subsequent “Frequently Asked Questions” (DA 10-2356).

- **Leased Lit Fiber** – Monthly charges, special construction, and maintenance charges are eligible. When lit fiber is leased as a Category One service, modulating electronics can be included as a part of that eligible service.
- **Leased Dark Fiber** – Within the eligible entity’s property line, maintenance and special construction costs to connect the fiber to the eligible entity’s facilities are eligible. Beyond the eligible entity’s property line, special construction charges are not eligible, but monthly charges and maintenance provided as a component of leased dark fiber to maintain reliable operation are eligible. Re-routing of fiber is considered construction, not maintenance. If other customers are served by the leased dark fiber, only the pro rata costs of maintenance incurred by the eligible entity will be eligible for E-rate support. The purchase and ownership of modulating electronics associated with lighting dark fiber and modulating electronics on applicant-leased dark fiber leaving the eligible entity’s premises are not eligible.
- **IRUs** – An Indefeasible Rights of Use (IRU) purchase arrangement will be considered a lease of dark fiber for E-rate program purposes. If the IRU contains significant upfront charges, the charges may need to be amortized.

Internet access – Eligible Internet access may include features such as basic firewall protection, domain name service, and dynamic host configuration when these features are provided as a standard component of a vendor’s Internet access service. Firewall protection may not be provided by a vendor other than the Internet access provider and may not be priced out separately. Examples of items that are ineligible components of Internet access include applications, content, e-mail, and equipment such as computers, laptops, tablets, and all other end-user devices.

Wireless services and wireless Internet access services –Managed internal broadband services, such as managed Wi-Fi, are eligible only for Category Two support.

Category Two

The second category of equipment and services eligible for E-rate support, Category Two, includes the internal connections and services needed for broadband connectivity within schools and libraries. Support is limited to the internal connections equipment or services necessary to bring broadband into, and provide it throughout, schools and libraries. These are broadband connections used for educational purposes within, between, or among instructional buildings that comprise a school campus or library branch, and basic maintenance of these connections, as well as services that manage and operate owned or leased broadband internal connections (e.g., managed internal broadband services or managed Wi-Fi). Support for components and services in this category are subject to the funding, budgetary, and other requirements and limitations set forth in the *E-rate Modernization Order* and the Commission's rules. The eligible components and services in Category Two are:

Eligible Broadband Internal Connections Components

- Access points used in a local area network (LAN) or wireless local area network (WLAN) environment (such as wireless access points)
- Antennas, cabling, connectors, and related components used for internal broadband connections
- Caching
- Firewall services and components
- Switches
- Routers
- Racks
- Uninterruptible Power Supply (UPS)/Battery Backup
- Wireless controller systems
- Software supporting each of the components on this list used to distribute high-speed broadband throughout school buildings and libraries

Notes: (1) Functionalities listed above that can be virtualized in the cloud, and equipment that combines eligible functionalities, like routing and switching, are also eligible.

(2) A manufacturer's multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component.

(3) For funding year 2015, caching is defined as a method that stores recently accessed information. Caching stores information locally so that the information is accessible more quickly than if transmitted across a network from a distance. A caching service or equipment that provides caching, including servers necessary for the provision of caching, is eligible for funding.

Eligible Managed Internal Broadband Services

- Services provided by a third party for the operation, management, and monitoring of eligible broadband internal connections components are eligible managed internal broadband services (e.g., managed Wi-Fi).
- E-rate support is limited to eligible expenses or portions of expenses that directly support and are necessary for the broadband connectivity within schools and libraries. Eligible expenses include the management and operation of the LAN/WLAN, including installation, activation and initial configuration of eligible components, and on-site training on the use of eligible equipment.
- In some managed services models, the third party manager owns and installs the equipment and school and library applicants lease the equipment as part of the managed services contract. In other cases, the school or library may own the equipment, but have a third party manage it for them.

Basic Maintenance of Eligible Broadband Internal Connections Components

E-rate support is available for basic maintenance and technical support appropriate to maintain reliable operation when provided for an eligible broadband internal connections component.

The following basic maintenance services are eligible:

- Repair and upkeep of eligible hardware
- Wire and cable maintenance
- Configuration changes
- Basic technical support including online and telephone based technical support
- Software upgrades and patches including bug fixes and security patches

Eligibility limitations for Category Two components and services:

Eligibility limitations for managed internal broadband services - The equipment eligible for support as part of a managed internal broadband service may include only equipment listed as a broadband internal connections component above. Upfront charges that are part of a managed service contract are eligible for E-rate support except to the extent that the upfront charges are for any ineligible internal connections components (e.g., servers other than those that are necessary to provide caching) which, if included in the contract, must be cost allocated out of any funding request.

Eligibility limitations for basic maintenance – Basic maintenance is eligible for support only if it is a component of a maintenance agreement or contract for eligible broadband internal connections components. The agreement or contract must specifically identify the eligible components covered, including product name, model number, and location. Support for basic maintenance will be paid for the actual work performed under the agreement or contract. Basic maintenance does not include:

- Services that maintain ineligible equipment
- Upfront estimates that cover the full cost of every piece of eligible equipment
- Services that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment’s ability to transport information
- Network management services, including 24-hour network monitoring
- On-site technical support (i.e., contractor duty station at the applicant site) unless applicants present sufficient evidence of cost-effectiveness
- Unbundled warranties

Miscellaneous

As described below, various miscellaneous services associated with the eligible services and components above are eligible for support. Applicants should request miscellaneous services in the same category as the associated service being obtained or installed.

Fees

Fees and charges that are a necessary component of an eligible product or service are eligible including:

- Change fees
- Contingency fees are eligible if they are reasonable and a regular business practice of the service provider. Contingency fees will be reimbursed only if the work is performed.
- Freight assurance fees
- Lease fees to rent or lease eligible components
- Per diem and/or travel time costs are eligible only if a contract with a vendor for the eligible product or services specifically provides for these costs
- Shipping charges
- 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.

Installation, activation, and initial configuration

Installation, activation, and initial configuration of eligible components are eligible. These services may include:

- Basic design and engineering costs if these services are provided as an integral component of the installation of the relevant services
- Basic project management costs if these services are provided as an integral component of the installation of the relevant services
- On-site training is eligible as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and is part of the contract or agreement for the equipment. Training must occur coincidentally or within a reasonable time after installation.