

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

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

**COMMENTS OF VERIZON ON PROPOSED
RULEMAKING AND ORDER**

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COMMENTS OF VERIZON¹ ON PROPOSED RULEMAKING AND ORDER²

The Commission should promulgate changes to the schools and libraries universal service mechanism that would simplify the program and reduce its costs. These include the proposals to treat voicemail as an eligible service, and impose reasonable restrictions on the transfers of equipment. However, it should not go forward with a number of other proposals that would impermissibly expand the reach of the program, create the wrong incentives, or make the program considerably more burdensome to administer. Most importantly, the Commission should not revise the rules to allow rural schools and libraries to expand e-rate funded services to others in the community, as such a rule change is beyond the authority granted in the Act, and would violate rules of competitive neutrality that the Act was designed to foster. It also should not adopt rule changes that would mandate billing practices, lists of eligible services, or audits that are paid for by those being audited, as those rule changes would impose unnecessary and expensive burdens.

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc., and are listed in Attachment A.

² *Schools and Libraries Universal Service Support Mechanism*, Notice of Proposed Rulemaking and Order, CC 02-6, FCC 02-8 (rel. Jan. 25, 2002) (“NPRM & Order”).

I. The Commission Should Not Expand the Rules to Allow Funds Dedicated for Schools and Libraries to Be Used For Non-Educational Purposes By Rural Communities

The Commission has requested comment on whether it should amend the regulations to allow schools and libraries participating in the universal service program to share “excess service” with persons who would *not* be using the service for educational purposes, “when services are not in use by the schools and libraries for educational purposes.” NPRM & Order, ¶ 45. The answer to that question is emphatically no. Such a rule change would violate the Act, skew competition in a nascent broadband market, and create perverse incentives for providers and applicants to over-request funds from a limited pool.

Chairman Powell has previously noted that broadband “has become the central communications policy objective today.”³ Verizon has repeatedly supported that objective. However, there must be enormous investments made in order to make the dream of nationwide broadband availability a reality. The Commission currently is conducting multiple proceedings to consider the regulatory status of broadband services, and it is critical that the Commission undertake a comprehensive review to establish a nationwide broadband policy. That policy should be removing artificial regulatory obstacles to investment, and “letting a competitive marketplace thrive.”⁴ It should not be to allow for piecemeal subsidies to certain broadband providers, which would deter broadband investment in rural areas.

³ Michael K. Powell, Chairman, Federal Communications Commission Press Conference, “Digital Broadband Migration” Part II (Oct. 23, 2001).

⁴ FCC Chairman William E. Kennard, Remarks before the Federal Communications Bar Northern California Chapter (July 20, 1999).

A. The Act Does Not Allow Funds Dedicated to Schools and Libraries To Be Used to Fund Competition in Broadband

As an initial matter, the Commission's proposal to extend services provided to schools and libraries to others in the community would violate the spirit and letter of the Act. By using services that Congress earmarked solely for educational purposes to subsidize additional services in rural areas, the Commission's proposal would impermissibly expand the reach of the schools and libraries program, and unwittingly inhibit the expansion of Internet and other advanced services to rural areas by undermining competition.

Giving e-rate support to services outside the definition of universal service would violate the Act. The Act sets up a hierarchy of universal service programs, with the goal of encouraging a basic level of service for all, and a more advanced level to a limited class of participants. At the basic level, the Act requires the Commission to set a definition of universal service that will apply to all persons in the United States. *See* 47 U.S.C. § 254(c)(1). Although Congress acknowledged that the definition of universal service would be an evolving one, the Commission was directed that the definition should consider whether such services were "essential" and "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers." *Id.* Following that directive, the Commission set a definition of universal service that included basic services – such as voice grade access to the public switched network, and access to emergency services. 47 C.F.R. § 54.101. The universal service definition does not include Internet access, or other advanced services. *Id.*

Above and beyond that basic level of universal service, Congress created a rule specifically for "SPECIAL SERVICES" which directs that "the Commission may

designate *additional* services for such support mechanisms for schools, libraries, and health care providers. . . ” 47 U.S.C. § 254(c)(3) (emphasis added). However, the Act plainly limits “special” “additional services” to be provided only to schools and libraries, not to be shared with the larger public. In fact, the statute repeatedly sets limits on how these special funds shall be used, and prohibits using specifically designated universal service funds for purposes other than those enumerated.⁵

This dichotomy between basic universal service and other special services is one that reflects a sound legislative choice that should be honored by the Commission. Congress recognized that there were not unlimited taxpayer funds to provide “special” “additional services” to all Americans, and thus chose a smaller class – schools, libraries, and health care providers – to be the beneficiary of such services. The rule change the Commission has proposed would substitute the Commission’s judgment for that of Congress, providing subsidies for these special, additional services to be provided to an entirely *new* class of participants not contemplated by the Act – rural, remote communities that are located near schools and libraries participating in the e-rate program.

Not only would such an expansion of service go beyond the Commission’s authority as directed by Act, but it also would violate the Act’s directive that the

⁵ See, e.g., 47 U.S.C. § 254(e) (A carrier receiving “specific Federal universal service support . . . shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended”) (emphasis added); 47 U.S.C. § 254(h)(1)(B) (additional services provided to schools and libraries shall be provided “to elementary schools, secondary schools, and libraries *for educational purposes*”) (emphasis added); 47 U.S.C. § 254(h)(3) (“Telecommunications services and network capacity provided to a public institutional telecommunications user under this [schools and libraries] subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value”).

Commission establish “competitively neutral rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries” 47 U.S.C. § 254(h)(2)(A). If the Commission allowed schools and libraries in rural areas to expand “excess service” to the surrounding communities, the Commission would essentially be authorizing schools and libraries to act as free Internet Service Providers (ISPs), subsidized by taxpayer dollars. Other ISPs who might have contemplated expanding to such rural areas will be unable to compete, and thus will not invest, in such expansion. This is contrary to the Commission’s policy of fostering facilities-based competition, especially in the growing broadband market.

B. The Proposed Rule Change Constitutes Bad Policy Because it Uses Universal Service Dollars To Subsidize Competitors and Discourages Independent Investment in Rural Areas

Even if it were not a violation of the Act, there are significant policy reasons why the Commission should not change the rules to allow schools and libraries to expand e-rate funded services to a broader community-wide level. First and foremost, the government should not use universal service dollars to subsidize certain competitors, to the detriment of others, in the nascent broadband market. Because most personal Internet usage occurs in the evening hours (after schools and libraries are closed), the Commission would be using these universal service dollars to fund free Internet access during peak times. Such a system could discourage new competitors from entering the market. Thus, these communities could become dependent on the “excess” schools and libraries service, undermining competitive alternatives and discouraging new investment.

The system also creates incentives for providers and applicants to ask for more service and products than they require, in order to provide – with universal service subsidized dollars – services for the entire community. Although the Commission proposes adding conditions to the rule that would limit how the excess services could be used, the limits proposed would be difficult to administer, and easy to circumvent. For example, one could easily imagine a provider only offering Internet services at a high rate, on a “non-usage sensitive basis,” knowing that the school would be willing to accept such a deal because, under the Commission’s new rules, the “excess” services provided during hours when the school is not using it would be offered for community use. Indeed, the proposed rule change could very easily alter the deliberations of school boards, who would be motivated to spend school funds on telecommunications upgrades at the expense of other projects that may have been more deserving if the focus was solely on the school.

The Commission’s proposed rule change appears to have been inspired by the recent waiver given to the State of Alaska, which exempted the state from having to certify that any e-rate sponsored services will be used solely for educational purposes. NPRM & Order, ¶ 43. There were unique circumstances present in State of Alaska, however. As the Alaska petition⁶ argued, “[c]ommunities in rural Alaska differ substantially from rural communities in the rest of the United States” and are “far more remote and isolated than rural communities in other states.” Alaska Petition, at 5, 6. Indeed, most of the rural areas do not even have roads that would lead to the more urban

⁶ Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages, CC Docket No. 96-45 (filed Jan. 29, 2001) (“Alaska Petition”).

areas of the state, or access to terrestrial telecommunications lines. *Id.*, at 6-7, 9. In addition, e-rate aid to public libraries – which is one method where the community normally would have access to subsidized special services – is uniquely unable to help Alaskan communities.⁷ The waiver offered to Alaska was based on a combination of unique circumstances that are unlikely to apply to any other area. It should not be the basis for a rule change that would create an overbroad and anti-competitive expansion of the e-rate program.

II. The Commission Should Not Mandate Particular Billing Systems

Currently, e-rate funds are not paid directly to the applicants, but are paid to the service provider, which then uses them to offer discounted services. There are two potential methods of payment: (1) the applicant pays the service provider the full cost of services, then receives the discounted portion after the provider receives e-rate funds from the Administrator through the Billed Entity Application for Reimbursement (“BEAR”) process; or (2) the applicants pay only the non-discounted portion of the services, and providers seek reimbursement from the Administrator from the remaining portion. Under the existing system, service providers and applicants work together to determine which method of payment is used. NPRM & Order, ¶ 33. The Commission has requested comment on whether it should *require* providers to give applicants the choice of using either BEAR or discounted billing. *Id.*, ¶ 34. It should not. Mandating a customer-only choice would impose significant burdens on providers, because for many, the discounted billing method is extremely costly and time consuming to implement.

⁷ The Petition stated that most Alaskan villages do not have public libraries, and the libraries that do exist typically are only open 10 to 15 hours a week. Alaska Petition, at 8-9.

Payment through the BEAR process is the most simple and cost-efficient method for vendors and service providers. Directly billing the customer for only the non-discounted portion of products and services imposes high costs on the provider, both in terms of the cost of providing free financing until the refund comes through and in terms of bills that become uncollectible if the discounts are not approved. Such a system effectively puts the provider in the position of Administrator, unfairly burdening the provider with the administrative tasks associated with determining which services would be eligible and ineligible for discounts. However, without using the BEAR system, it is absolutely necessary for a provider to review the billing beforehand, because any “discount” that the provider applies based on customer application may not be recouped if the Administrator does not approve it.

Direct billing for only the non-discounted portion, and determining which portion of the e-rate funding applies to each product or service, can be incredibly time consuming and burdensome. At Verizon, the direct billing process is follows: Once the USAC approval for funding is sent to Verizon, Verizon must determine exactly which billing telephone numbers (BTNs) are included in a specific funding request number (FRN).⁸ Verizon must then review each BTN in order to separate out services that are not eligible for discounts. Manual adjustments then must be calculated and applied via service order on each BTN, retroactive to the date the discount was first applicable. In addition, all BTNs must be monitored regularly to ensure that the funding cap is not exceeded. When the cap is reached (or about to be reached), service orders must be made for every BTN in

⁸ Under the current rules, services must be tracked by FRN rather than BTNs, even though BTNs are the tracking method that Verizon (along with most other telecommunications service providers) typically uses for billing purposes.

order to remove the discount. Verizon also checks each BTN at the end of the funding year or when the cap has been reached, and sends an invoice to the Schools and Libraries Division for reimbursement. Although Verizon has already made significant billing changes at considerable expense in order to administer e-rate funding, much of this work still must be done manually, and must to be redone every year as new funding requests are considered.

Currently, Verizon works with the customer, on a case-by-case basis, to mutually determine whether it is cost-effective to provide direct billing of the non-discounted portion if that option is important to the customer. However, for large customers in particular, this direct billing of the non-discounted portion can be a monumental task. For example, Verizon has one school board customer with approximately 10,000 BTNs that all would have to go through the processes outlined above. If carriers were forced to incur the additional administrative charges necessary to go to a discounted billing system, the costs undoubtedly would be passed on in the form of higher rates to all customers, especially for carriers operating under rate-of-return pricing.

Rather than imposing a mandatory system, the Commission should continue to encourage “service providers and applicants . . . to work together to determine” the billing method that will be imposed. NPRM & Order, ¶ 33. An applicant who wants discounted billing can request that type of billing when soliciting bids from potential service providers. Service providers who can provide that billing efficiently without major billing changes will do so, in order to remain competitive. Such a flexible approach is consistent with “a pro-competitive, de-regulatory national policy framework”

that the Act was designed to foster. H.R. Conf. Rep. 104-458, 104th Cong. 2d Sess. at 1 (1996).

Complaints about the timeliness of carriers forwarding BEAR payments to applicants may be based on a misunderstanding of the process. It appears that some applicants may confuse the date the Administrator approves the BEAR payments with the date the carrier actually receives the payment. Currently, USAC sends the service provider a BEAR approval letter, a copy of which is sent to the applicant. The letter advises that the applicant must be reimbursed no later than ten calendar days after receiving the BEAR check from USAC. However, the BEAR check is not included in that letter. Rather, the letter advises that USAC will mail the BEAR check to the service provider within twenty calendar days of the date of the approval letter. Often, Verizon does not receive the BEAR check before the end of the twenty day period. Applicants who do not read the letter carefully, or who believe that the provider receives the payment more quickly than it actually does, may have a perception of tardiness by the provider that is not based on fact.

In any event, any lingering timeliness problems could be addressed by the Commission's proposed rule that would require service providers to remit payments to the applicants within twenty days of having received the payments from the fund administrator. NPRM & Order, ¶¶ 35-36. The Commission has asked for comment on whether failure to meet the twenty day rule "will constitute a rule violation potentially subjecting the service provider to fines and forfeitures under section 503 and/or other law enforcement action." NPRM & Order, ¶ 35. It should be emphasized that section 503 applies a forfeiture penalty only if a provider has "willfully or repeatedly failed to comply

with” the Act or its rules. 47 U.S.C. § 503(b)(1)(B). The Act plainly contemplates that only intentional or repeated violations warrant significant forfeiture penalties, and thus any such penalties should be reserved for only such egregious violations. Occasional late payments by providers who make good faith efforts to comply with the twenty day benchmark, and who meet the twenty day requirement in most cases, should not warrant punitive measures.

III. It Is Not Feasible or Advisable for the Commission to Require that Products and Services Be Selected from a Pre-Approved List of Eligible Services

Providing applicants with a list of pre-approved eligible services likely would help applicants avoid applying for ineligible services. *See* NPRM & Order, ¶ 14. However, given the extraordinary number of potentially eligible products and services that are available (and that become newly available every day), it would be a mistake for the Commission to attempt to create a comprehensive list, or to require that *only* services and products contained on such a list receive approval.

As an initial matter, requiring the Administrator to list *every* potentially eligible product or service would constitute an administrative nightmare. If the Commission were to go to the detail it is proposing (namely, of listing alternatives by brand name), there are thousands of products and services that would be eligible. For example, there are multiple different names just for Verizon voice services. Cataloguing and regularly updating the list would add an incredible administrative burden on USAC. And given the rapid advances of technology and product marketing, it would be impossible for USAC to keep the list timely and comprehensive. Because there inevitably would be a lag time before newer items are added to the list, a policy of granting funding only for items on a pre-approved list would inhibit investment in new products and services. Moreover,

there would be no easy way to address the difficulty presented by the fact that many products and services are only conditionally eligible. Applicants would be likely to incorrectly assume that a product on the approved list would be eligible, when in fact it might not be because it is being used for an ineligible purpose or in an ineligible location.

The product and service eligibility list currently works well as is. If the Commission wants to enhance that list, rather than creating a mandatory list of every potentially eligible service, a better solution would be for the Administrator to release a list of “sample” products and services that would be eligible. This would give more direction than the general guidelines currently available, but would not require the Administrator to keep abreast of all potentially applicable new products and services.

IV. The Commission Should Not Require Participants and Providers to Pay for Audits, as it Would Discourage Participation and Impose Burdens on Those Least Able to Afford it

The Commission has sought comment on whether it should amend the rules to “explicitly authorize the Administrator to require independent audits of recipients and service providers, at recipients’ and service providers’ expense, where the Administrator has reason to believe that potentially serious problems exist, or is directed by the Commission.” NPRM & Order, ¶ 59. Again, the answer is no. Requiring applicants to pay for their own audits would impose large administrative costs on those schools and libraries that can least afford it. In addition, the rule would almost certainly inhibit participation in the e-rate program by both plan participants and potential providers, especially smaller market players. The e-rate program is already costly and burdensome to administer. If the Commission were to add to the potential costs the risk of an

expensive audit, many of the smaller players would simply choose not to apply for e-rate support, or not to bid on e-rate projects.

V. The Commission Should Not Allow E-Rate Funds to Pay for Internet Content

The Commission has asked whether e-rate funds should be allowed to subsidize Internet content when an Internet provider only offers Internet access bundled with content. *See* NPRM & Order, ¶¶ 23-25. The Commission should reject such a rule change because it would create the wrong incentives, and would use funds from a limited e-rate pool to subsidize something other than the enhancement of “*access to advanced telecommunications and information services.*” 47 U.S.C. § 254(h)(2)(A) (emphasis added).

Under the current rules, if an applicant purchases an Internet access service that is bundled with more than a “minimal amount of content,” only the access portion is subsidized through the e-rate program. *See* NPRM & Order, ¶ 23. Such a rule is both consistent with the Act – which only speaks of “access” – and gives an Internet service provider an incentive to unbundle the access piece from content in order to gain the business of schools and libraries. By contrast, the potential rule change put forward by the Commission would encourage an Internet provider to *refuse* to unbundle Internet access from content, so that it could be compensated for the entire piece. The proposed rule change also would provide incentives for an applicant to apply for bundled services (even if they are not superior to other available access services), in order to use e-rate to subsidize the purchase of content. Moreover, it would put the USAC Administrator in the unenviable position of trying to judge which types of Internet content are appropriately funded with universal service dollars.

The Commission posited a hypothetical situation where an applicant would have the choice between two Internet providers, one which offers service only bundled with Internet content for \$50 per month (or content alone for \$30), and another that, for the same \$50 total price, “just offers Internet access” and has “poorer service and reliability.” NPRM & Order, ¶ 24. The Commission theorized that, in such a situation, giving credit for only the Internet access portion (rather than the \$30 attributable to content) “may create undesirable incentives for an applicant to chose a provider with a similar price but poorer service and reliability.” *Id.* However, as a practical matter, the hypothetical the Commission proposes – that one Internet provider offers less reliable and less complete service as another provider who, for the same price, provides better Internet access, bundled with content – should be very rare in the competitive marketplace. In other words, it is hard to imagine that a provider who offers less for more could stay in business for very long. By contrast, the bad incentives created by the rule change would be far more commonplace and potentially far-reaching.

VI. Voicemail Should Be Included In Services Covered by E-Rate

As the Commission has recognized, there is an “increasing need for, and prevalence of, voice mail as a way of communication with school and library staff for educational purposes.” NPRM & Order, ¶ 22. It is inconsistent for the Commission to treat voice mail as ineligible for universal service funding while support is provided for other information services that allow for similar messaging purposes (such as email). Indeed, in low income schools, access to voice services is more prevalent than access to Internet services such as email. In addition, allowing voice mail services to be eligible

would reduce administrative burdens associated with separating out those services from other approved, eligible services. *See* NPRM & Order, ¶ 22.

VII. The Commission Should Impose Reasonable Restrictions on Transfers of Equipment

The Commission also has sought comment on whether it should implement rules restricting the transfer of equipment. Such a rule change would be designed to eliminate cases where eligible schools who have received funding donate their equipment to other schools or libraries in the district who were not eligible, then reapply for funding for the same equipment. *See* NPRM & Order, ¶ 37. The Commission should work to curtail such abuses of the program by limiting transfer of equipment for three years after installation, or ten years in the case of cabling, as suggested. *Id.*, ¶ 39. It should permit waivers from such rules only in limited circumstances, on a case-by-case basis. The alternative proposal – denying internal connections discounts to any entity that has already received discounts on internal connections within a specified period of years – would be overbroad. That proposal would not account for applicants that may have legitimate needs for additional connections, such as those that had previously only asked for funding of partial upgrades, or that are undertaking an expansion that warrants additional e-rate investment.

Conclusion

The Commission should not change the rules to allow services designated for schools and libraries to be used for non-educational purposes in rural communities. It should adopt rules that would be consistent with simplifying the schools and libraries program, and refrain from adopting changes that would create additional burdens or incentives for fraud, abuse, and waste.

Respectfully submitted,



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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.