

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

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

The Commission should resist suggestions that would dramatically increase the size of the universal service fund, invite abuse or waste, or increase administrative costs on providers and USAC. Instead, it should focus on serving the core goal of the schools and libraries fund – to provide services “for educational purposes,” 47 U.S.C. § 254(h)(1)(B) – and implement changes to the program that would simplify its administration and reduce its costs.

I. The Commission Should Not Allow Monies Earmarked for Schools and Libraries to be Used to Fund Other “Excess” Services

Many commenters expressed a desire to expand the “excess capacity” waiver given to Alaska schools to other circumstances, much broader than those at issue in the Commission’s Alaska decision. However, opening the door to such suggestions is in reality opening a Pandora’s box. Indeed, commenters already are suggesting that they be allowed to share services in circumstances much broader than the narrow, “rural remote areas” situation present in the Alaska petition. *See* NPRM, ¶ 43. For example, some have suggested that sharing of “excess” services not be limited to “rural” areas, but should be expanded even in urban areas, theorizing it would be appropriate to use e-rate funds to support service to “economically depressed areas,” “families in the inner-city

and high-poverty communities,” “[a]dult learning centers and public job training programs,” and “community centers.”¹ One commenter even argued that non-profit organizations be allowed “to use the unused capacity in school and library purchases at any time – not only during the school and library off-hours.” Information Renaissance Comments, at 7. Regardless of the particular spin, these commenters made it clear that they regard the Alaska waiver as “the Commission’s first step toward leveraging E-Rate resources for the use of other community members.”²

As stated in Verizon’s opening comments, the Commission should reject the suggestions to expand the limited waiver granted to Alaska to other situations of purported “excess” service, because it would violate the Act, invite waste, and constitute bad public policy by undermining principles of competitive neutrality. Verizon Comments, at 2-7.

A rule that routinely allowed schools and libraries to extend USF-subsidized services to the general community, rather than limited to “educational” services provided by the schools and libraries, would violate the Act. It would unlawfully expand the scope of the fund that is expressly limited under the statute solely to services provided “to elementary schools, secondary schools, and libraries,” and is expressly limited to use “for educational purposes.” 47 U.S.C. § 254(h)(1)(B). It also would violate principles of competitive neutrality, by allowing e-rate funds to subsidize competition in advanced services. *See* Verizon Comments, at 4-5.

¹ *See* Comments of Illinois State Board of Education, at 23; Comments of Council of the Great City Schools, at 5; Comments of the New York City Board of Education, at 7; Comments of Pennsylvania Department of Education, at 7-8.

² Comments of National Education Association, International Society for Technology in Education, and the Consortium for School Networking, at 21.

In addition, expanding the limited Alaska waiver into a blanket exception for sharing schools and libraries services with the broader community would put an unnecessary strain on a fund that must be limited to “educational purposes.” USAC has pointed out that accepting the expansion of the Alaska waiver situation would create an increased risk “that eligible schools and libraries will purchase more services than they need for educational purposes in order to satisfy other community demands.” *See* Comments of USAC, at 26. That would, in turn, limit the amounts that can be used by other applicants, and put a strain on the fund size. Correspondingly, in order to try to limit such abuses, USAC opined that the new rule would create “a significant new workload for USAC to monitor service levels from year to year to see if increases are justified purely by educational use.” *Id.*

II. The Commission Should Not Impose Mandates on Provider Billing Systems

While many commenters argued that applicants should be allowed to mandate a particular billing method, most offered little or no analysis (and perhaps have insufficient understanding) of the costs that would be imposed on service providers if the “choice” was one that could be unilaterally imposed by applicants. The “mutual agreement” policy has been in effect since the inception of the program and has proved to be a workable model.

One commenter argued that it is the applicant (not the provider), “who will be audited and must keep detailed records and justification,” and that “since the provider is receiving full cash payment for its services or products in either situation, there should be no reason it cannot accommodate either the request for cash reimbursements or discounts.” Comments of New York Public Library, at 4. Unfortunately, these

comments reflect an overly simplistic view of the schools and libraries process. First, it is not just the applicant who will be audited. USAC can – and does – audit the provider, and if it determines that payments have been made in error or for ineligible services, the Commission has directed USAC to seek repayment from the *provider*.³ The provider is then left in the awkward position of attempting to recover this overpayment from the school or library. Thus, often it is the provider, rather than the applicant, who pays the cost of audits and funds disbursed in error or for ineligible services.

In addition, for providers such as Verizon who offer bundled services to large customers, the discounted billing option can be very burdensome to administer. Verizon's bills to large customers, for example, may reflect *thousands* of different billed telephone numbers (many of which may not be eligible, and thus must be removed from any discount analysis). And separate and apart from the issue of voluminous customer lines, the billing often is multi-layered in other ways – for example, it may contain both eligible and ineligible services, fixed and variable fees, and recurring and non-recurring charges. In smaller communities, there may be only one bill for the entire town's services, so the schools and libraries portion of the bill must be segregated from the services provided to the fire department, town hall, and others. Moreover, if the applicant's discount is not approved by SLD until after the service has started to be provided, another layer of difficulty is added, as the provider must retroactively credit the applicant with past discounts. Because the funding commitments elapse at the end of one

³ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Order, CC Docket Nos. 97-21 and 96-45, 17 Comm. Reg. (P&F) 1192, ¶ 8 (1999).

year, all of these billing changes must be made at least annually, and more often if more than one request is made in a year.⁴

Another commenter argued that, “[i]n refunding discounts to billed entities, service providers have a financial incentive to delay refunds.” Comments of the New York State Education Department, at 2. This comment, too, appears to be based on a misunderstanding of the Billed Entity Applicant Reimbursement (“BEAR”) process. In filling out the BEAR form, the service provider must acknowledge that, “The service provider *must remit payment of the approved discount amount to the Billed Entity Applicant prior to tendering or making use of the payment* issued by the Universal Service Administrative Company to the service provider of the approved discounts for the Billed Entity Applicant Reimbursement Form.”⁵ Thus, there is no incentive for delay, because the provider cannot “tender[] or mak[e] use” of the applicant’s BEAR funds before the applicant is paid.

One simple way to guarantee there is not abuse of the BEAR process (for example, by providers who allegedly cash the BEAR check and then fail to promptly forward the money to the applicant),⁶ is to allow payments to be made directly to the

⁴ More than one commenter also recognized that the discounted billing method could impose significant burdens on small service providers. *See, e.g.*, Comments of the Rural School and Community Trust, at 5-6.

⁵ Billed Entity Applicant Reimbursement Form, FCC Form 472, Block 4. Form 472 warns that persons making willfully false statements on the form may be punished by fine, forfeiture, or imprisonment. *See* Form 472, at 1.

⁶ As Verizon pointed out in its initial comments, many applicants may wrongly believe that there is a delay caused by the provider, based on a misunderstanding of the application process. *See* Verizon Comments, at 10. USAC’s comments confirm this. *See* USAC Comments, at 34-35 (“Based on anecdotal reports, USAC has reason to believe that many applicants may think the process is complete once they receive the Funding Commitment Decision Letter,” when, in reality, USAC must receive an additional FCC Form 486 “in order for invoices to be paid”).

applicant, rather than having payments flow through the providers, as is the current practice. If the Commission is concerned about the legality of making payments directly to the applicant, it could allow providers to assign the BEAR payment to the applicant. If the Commission wants to use providers as the conduits of payment in order to ease USAC's administrative burdens, the Commission could send the BEAR payment in care of the provider, but have the check made out to the applicant's name, rather than to the provider's. Whatever the solution, the Commission should not impose a mandatory billing system, or other methods – such as requiring checks to be signed by *both* the applicant and the provider – that would complicate and slow down the payment process.

III. The Commission Should Resist Isolated Requests to Raise the Cap on Schools and Libraries Funding

The Commission should resist the pleas of those few commenters who advocated raising the cap for the schools and libraries program.⁷ The overwhelming majority of commenters did *not* argue that the cap for funding the schools and libraries program be raised, and rightfully so. As both the Commission and the Fifth Circuit have recognized in the context of another universal service program, “excessive funding may itself violate the sufficiency requirements of the Act. . . . Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by

⁷ See, e.g., Comments of the American Association of School Administrators, at 1 (arguing that the \$2.25 billion cap on the schools and libraries program should be raised).

consumers – excess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.”⁸

The Commission rightly has reasoned that, “in crafting universal service policies and programs, the Commission must strike a fair and reasonable balance among the goals and principles of the Act, and consider both the adequacy of support and the burden on contributors.”⁹ The assessment factor is now 7.2805 percent based on total program costs of \$5.541 billion on an annual basis. *See Proposed Second Quarter 2002 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 02-562 (rel. Mar. 8, 2002). And that burden is only likely to grow, as the Commission is facing requests to increase the services included, and the funding size, of the universal service program.¹⁰ Thus, if the universal service fund grows much larger, it will impose great costs on all consumers, endangering the very first principle of universal service – that “[q]uality services should be available at just, reasonable, and affordable rates.” 47 U.S.C. § 254(b)(1).

⁸ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, 16 FCC Rcd 11244, ¶ 27 & n.69 (2001) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 619 (5th Cir. 2000)).

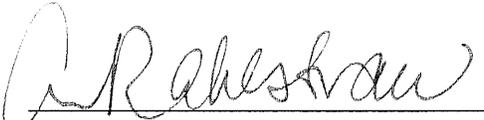
⁹ *Id.* (footnote omitted).

¹⁰ *See, e.g., MAG Plan for Regulation of Interstate Services of Non-Price Cap ILECs and IXCs*, 16 FCC Rcd 19613, ¶ 9 (2001); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, NPRM and Order, FCC 02-41, ¶¶ 16-17 (rel. Feb. 15, 2002); *Maine PUC and Vermont PSC Petition for Reconsideration*, CC Docket No. 96-45 (filed Feb. 22, 2002); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, NPRM, FCC 02-122 (rel. April 19, 2002).

Conclusion

The Commission should reject proposals to increase the fund size or expand the Alaska waiver to other “excess” services situations, and should not impose conditions, such as mandatory billing methods, that would increase administrative costs.

Respectfully submitted,


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