

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

In the Matter of)	
)	
Application for Review of Decision of)	CC Docket No. 02-6
the Schools and Libraries Division)	
of the Universal Service Administrative)	
Company)	
)	
Appeal of Commitment Adjustment)	
Funding Year: 1999-2000)	
Form 471 Application Number: 125549)	
Applicant: South Baltimore Learning Center)	

**REQUEST FOR REVIEW AND/OR WAIVER BY
VERIZON NETWORK INTEGRATION, INC.**

Introduction

This appeal is from the May 27, 2004 letter from Universal Service Administrative Company (“USAC” or “the Administrator”) to Verizon Network Integration Corporation. (“Verizon”). *See* May 27, 2004, Commitment Adjustment Letter, from USAC to Donna Kuhn, Verizon Network Integration, Inc., (“Commitment Adjustment Letter”), attached hereto at Exhibit A. In the letter, USAC states that it is rescinding \$2,680.20 in funding because the applicant was unable to provide evidence that their technology plan was approved and, in a telephone conversation, admitted that they never received a technology plan approval letter. Exhibit A, at 4.

As an initial matter, there is no evidence that the funds at issue were not properly spent. If the funds were actually used to provide eligible services, they should not be rescinded because of the applicant’s failure to get its technology plan approved. Moreover, regardless of whether the applicant committed any errors that would warrant a

withdrawal of universal service funding, there is no suggestion that Verizon is in any way at fault; indeed, it has no role in reviewing an applicant's technology plan, or determining whether it has been approved by the appropriate entity. When the service provider has already disbursed the funds to the applicant, and there is no suggestion that the service provider committed any errors or engaged in waste, fraud, or abuse of E-rate funds, the Commission should direct USAC to seek repayment from the applicant.

I. Background

Verizon received a Commitment Adjustment Letter stating that USAC was rescinding a portion of E-rate funds that had been distributed to the applicant for "INTERNAL CONNECTIONS," because the applicant failed to demonstrate that it had an approved technology plan. Exhibit A, at 4. The entire description of the basis for USAC's decision is as follows:

After a thorough investigation, it was determined that this funding request will be rescinded in full. During an audit, the applicant was asked to provide evidence that their technology plan had been approved and was unable to do so. Additionally, the applicant admitted, in a phone conversation, that they have never received a technology plan approval letter. In accordance with the rules of Schools and Libraries Division Support Mechanism, a technology plan must be approved prior to the submission of the Form 486 or the date the services begin in order to receive discounts on services other than basic local and long distance telephone service. Since this is not a request for Basic Local or Long Distance Service an approved technology plan was required. Accordingly the funding request has been rescinded in full.

Exhibit A, at 4.

Although the USAC letter states that the applicant failed to demonstrate that it had the technology plan *approved*, it appears from the USAC letter that the applicant did *create* a technology plan. Moreover, there is no indication that the technology plan was

inadequate, or that the E-rate funds were wasted or spent on ineligible services. Thus, there is no sound policy reason to seek a refund in this case.

Verizon has no role in certifying applicants' compliance with the technology plan requirements, and there is no suggestion by USAC that Verizon is at any way at fault for any error in disbursement. Nevertheless, the Commitment Adjustment Letter informs Verizon that USAC may seek to "recover some or all of the funds disbursed." Exhibit A, at 1. According to current USAC practices, USAC is likely to ask the "service provider" (*i.e.*, Verizon) to repay any funds it believes were disbursed in error. *See Changes to the Board of Directors of the National Exchange Carrier Association*, Order, 15 FCC Rcd 22975, ¶ 6 (2000); *see also* <http://www.sl.universalservice.org/reference/COMAD.asp>.

II. The Commission Should Not Seek Repayment for Failure to Get Approval of a Technology Plan Unless It Determines That the E-rate Funds Were Not Properly Utilized

As an initial matter, the Commission should direct that USAC not seek repayment of these funds from either the service provider or the applicant in this case. The basis for the commitment adjustment letter is that USAC has determined that the applicant did not prove that it had a technology plan *approved*. Exhibit A, at 4. However, it appears that the applicant did create a technology plan, and there is no evidence that the applicant failed to use the funds for proper purposes. Once the funds have been disbursed, and it can be determined whether the applicant *has* made use of those service for their intended purposes, failure to get approval of the technology plan should not be a basis for rescinding funding. The Commission required approval of technology plans to ensure that they "are based on the reasonable needs and resources of the applicant and are

consistent with the goals of the program.”¹ Once the funds already have been disbursed, and it can be determined whether the applicant used E-rate funding to provide for services reasonably within the program’s goals, mere failure to get approval of the technology plan should not be grounds to rescind funding.

III. The Commission Should Not Seek Repayment From Verizon, and Should Direct USAC to Change Its Procedures So That Service Providers Are Not Asked To Repay E-rate Funds When They Already Have Been Distributed To the Applicant, and the Service Provider Is Not At Fault

In addition, even if it would be proper to seek reimbursement from the applicant in this case, USAC should not seek reimbursement from Verizon for these funds. Unless there is some evidence that the service provider was engaged in wrongdoing, there is no reason to punish it for the applicant’s failure to get its technology plan approved.

More generally, the Commission should use this opportunity to change the rules regarding recovery of E-rate funds that have been disbursed in error. As explained more fully in Verizon’s comments in the schools and libraries rulemaking proceeding, the Commission should direct the Administrator to change its processes so that it does not seek to recover E-rate funds from service providers who are not responsible for any errors in disbursement.² As the Commission recently reaffirmed, although E-rate funds “flow to the applicant *through* the services provider,” any funds that are “disbursed” to the service

¹ *Federal–State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶574 (1997).

² See Verizon Comments, *Schools and Libraries Universal Service Support Mechanism* CC Docket 02-6, at 2-10 (filed Mar. 11, 2004) (attached at Exhibit B and incorporated herein by reference).

provider must be promptly given to the applicant.³ Even though the service provider is a conduit for any award, it is the applicant, rather than the service provider, that receives the direct benefit of E-rate funds. Thus, when the Administrator determines that a discount was improper only after the funds have been given to the applicant, absent any showing of wrongdoing on the part of the service provider, USAC should look to the applicant for any repayment of those funds.

Conclusion

The Commission should direct USAC not to seek recovery of E-rate funds from Verizon in this case. In addition, it should direct USAC to change its processes so that it does not seek recovery of funds from service providers when such funds have already been disbursed to the applicant and the service provider is not at fault.

Respectfully submitted,



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July 26, 2004

³ *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶¶ 42-51 (2003).

EXHIBIT A



Universal Service Administrative Company
Schools & Libraries Division

COMMITMENT ADJUSTMENT LETTER

May 27, 2004

Donna Kuhn
Verizon Network Integration, Inc.
52 East Swedesford Rd.
Frazer, PA 19355

Re: COMMITMENT ADJUSTMENT

Funding Year 1999 -2000

Form 471 Application Number: 125549

Applicant Name SOUTH BALTIMORE LEARNING CENTER

Contact Person: Jim Fragomeni

Contact Phone: 410-625-4215

Dear Service Provider Contact:

Our routine reviews of Schools and Libraries Program funding commitments revealed certain applications where funds were committed in violation of program rules.

In order to be sure that no funds are used in violation of program rules, SLD must now adjust these funding commitments. The purpose of this letter is to inform you of the adjustments to these funding commitments required by program rules.

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the FRNs from the application for which adjustments are necessary. The SLD is also sending this information to applicant, so that you may work with them to implement this decision. Immediately preceding the Funding Commitment Report, you will find a guide that defines each line of the Report.

Please note that if the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the funds disbursed. The amount is shown as Funds to be Recovered. We expect to send you a letter describing the process for recovering these funds in the near future, and we will send a copy of the letter to the applicant. If the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount.

TO APPEAL THIS DECISION:

If you wish to appeal the Funding Commitment Decision indicated in this letter, your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Commitment Adjustment Letter you are appealing. Your letter of appeal must include the Billed Entity Name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, copy the language or text from the Commitment Adjustment Letter that is at the heart of your appeal to allow the SLD to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125- Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We encourage the use of either the e-mail or fax filing options.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket Nos. on the first page of your appeal to the FCC. Your appeal must be POSTMARKED within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

A GUIDE TO THE FUNDING COMMITMENT REPORT

Attached to this letter will be a report for each funding request from your application for which a commitment adjustment is required. We are providing the following definitions.

- **FUNDING REQUEST NUMBER (FRN):** A Funding Request Number is assigned by the SLD to each request in Block 5 of your Form 471 once an application has been processed. This number is used to report to applicants and service providers the status of individual discount funding requests submitted on a Form 471.
- **SPIN (Service Provider Identification Number):** A unique number assigned by the Universal Service Administrative Company to service providers seeking payment from the Universal Service Fund for participating in the universal service support programs.
- **SERVICE PROVIDER:** The legal name of the service provider.
- **CONTRACT NUMBER:** The number of the contract between the eligible party and the service provider. This will be present only if a contract number was provided on Form 471.
- **SERVICES ORDERED:** The type of service ordered from the service provider, as shown on Form 471.
- **SITE IDENTIFIER:** The Entity Number listed in Form 471 for "site specific" FRNs.
- **BILLING ACCOUNT NUMBER:** The account number that your service provider has established with you for billing purposes. This will be present only if a Billing Account Number was provided on your Form 471.
- **ADJUSTED FUNDING COMMITMENT:** This represents the adjusted total amount of funding that SLD has committed to this FRN. If this amount exceeds the Funds Disbursed to Date, the SLD will continue to process properly filed invoices up to the new commitment amount.
- **FUNDS DISBURSED TO DATE:** This represents the total funds which have been paid up to now to the identified service provider for this FRN.
- **FUNDS TO BE RECOVERED:** This represents the amount of Funds Disbursed to Date that exceed the Adjusted Funding Commitment amount. These funds will have to be recovered. If the Funds Disbursed to Date do not exceed the Adjusted Funding Commitment amount, this entry will be \$0.
- **FUNDING COMMITMENT ADJUSTMENT EXPLANATION:** This entry provides a description of the reason the adjustment was made.

Funding Commitment Report for Application Number: 125549

Funding Request Number 184054 SPIN: 143004468
Service Provider: Verizon Network Integration, Inc.
Contract Number: C
Services Ordered: INTERNAL CONNECTIONS
Site Identifier: 196460 SOUTH BALTIMORE LEARNING CENTER
Billing Account Number:
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$2,680.20
Funds to be Recovered: \$2,680.20

Funding Commitment Adjustment Explanation:

After a thorough investigation, it was determined that this funding request will be rescinded in full. During an audit, the applicant was asked to provide evidence that their technology plan had been approved and was unable to do so. Additionally, the applicant admitted, in a phone conversation, that they have never received a technology plan approval letter. In accordance with the rules of Schools and Libraries Division Support Mechanism, a technology plan must be approved prior to the submission of the Form 486 or the date the services begin in order to receive discounts on services other than basic local and long distance telephone service. Since this is not a request for Basic Local or Long Distance Service an approved technology plan was required. Accordingly the funding request has been rescinded in full.

EXHIBIT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Schools and Libraries Universal Service
Support Mechanism

CC Docket No. 02-6

**COMMENTS OF VERIZON ON SECOND FURTHER NOTICE OF
PROPOSED RULEMAKING**

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March 11, 2004

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Schools and Libraries Universal Service
Support Mechanism

CC Docket No. 02-6

**COMMENTS OF VERIZON¹ ON SECOND FURTHER NOTICE OF
PROPOSED RULEMAKING**

I. Introduction and Summary

The Commission should not continue to require service providers to indemnify the schools and libraries fund for amounts that the Universal Service Administrative Company (“USAC” or “Administrator”) mistakenly approved for disbursement due to the errors or wrongdoing of another. Particularly when the applicant received the E-rate funds because of its own errors or wrongdoing, or when the service provider has stepped in as a “Good Samaritan” to forward E-rate payments to the applicant for services that have been provided by another vendor, it is unfair for the Administrator to go after the service provider to reimburse the fund for these losses. In addition, the Commission should direct the Administrator not to seek repayment of E-rate funds that would have been properly disbursed but for a technicality. It also should require USAC to set time limits, similar to statutes of limitations, beyond which USAC will not seek to recover

¹ The Verizon telephone companies (“Verizon”) are the affiliated local telephone companies of Verizon Communications Inc. These companies are listed in Attachment A.

funds disbursed in error. The time limits could be varied, and longer times could be allowed to recover funds disbursed due to serious or intentional violations of the program rules.

The Commission's rules for the funding priority of Wide Area Networks, the funding of dark fiber, and the cost-effective analysis applicants must perform in selecting new services should not be changed. While the Commission should use the same definition of "rural area" for both the E-rate and the rural health care programs, it should not broaden the definition of Internet access to conform with the recently adopted rural health care definition, as there is no evidence such a rule change would be "economically reasonable," as required by the Act.

II. The Commitment Adjustment Process Should Be Revised To Forgive Technical Violations and Avoid Penalizing Applicants and Service Providers That Act In Good Faith.

The Further Notice asks whether the Commission should change the current rules and procedures for recovering funds that were disbursed in error. *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 26912, ¶¶ 78-85 (2003) ("Notice"). The answer to that question is yes. Currently, USAC seeks repayment of funds that it finds were "disbursed in error," even if the "error" is merely a minor rule violation, such as a late-filed application, and even if the errors occurred years before, and the applicant spent the funds long ago. Unless there exists waste, fraud, or abuse, or a statutory violation that made the payments improper, the Commission should direct the Administrator *not* to seek repayment of disbursed funds for relatively minor rule violations.

The Commission also should change the policy of seeking repayment from the service providers for funds that have already been disbursed to the applicant, particularly when the service provider is not at fault, or when the provider is merely acting in a “Good Samaritan” role. Finally, except where fraud is present, the Commission should direct USAC not to seek repayment of funds that were disbursed long ago, but should instead set a clear statute of limitations after which it will not seek repayment at all.

- *Service providers should not be held liable for errors by the applicant.*

At the outset, there is no justification for seeking recovery from a service provider when funds have already been disbursed (or discounts already provided to the applicant), particularly when any errors were made by the applicant, over which the service provider had no control.² The service provider’s role is to submit a bid to provide services to a school or library, to provide the service if it is the successful bidder, and to undertake the administrative task of seeking reimbursement *for discounts received by the school or library* from the Administrator. Assessing the service provider years after the fact for errors that the applicant made in the initial application is not only unfair, but it will discourage service providers from bidding on new school and library service requests. It may be difficult or impossible for the service provider to obtain reimbursement from the school or library well after the fact, and, as a result, the service provider will have provided the service at a loss. Naturally, if the service provider still has the funds in its

² Reconsideration petitions filed by the United States Telecom Association and MCI WorldCom, Inc. challenging the Commission’s right to obtain reimbursement from service providers rather than applicants have been pending for more than four years. Those petitions should be granted. *See* Petition for Reconsideration of the United States Telecom Association (filed Nov. 8, 1999), MCI WorldCom, Inc. Petition for Reconsideration (filed Nov. 8, 1999).

possession, and has not yet passed the applicable discount on to the applicant, it should be the party to repay the Administrator.³ However, unless the service provider was to blame for the erroneous disbursement, there is no justification for requiring it to indemnify the Administrator for E-rate funds that have already been disbursed to the applicant.

In most cases, it is clear that any error in disbursement is not attributable to the service provider. Examples include the failure of the applicant to meet competitive bidding requirements, inclusion of ineligible services in the funding request, and use of eligible services in an ineligible manner. In those instances, the application should have been rejected, in whole or in part, on the merits. The applicant, not the service provider, failed to follow the substance of the Commission's or USAC's rules, and the Administrator should be instructed that it may take recourse only against the school or library. This should be the case whether or not existing procedures are codified into the Commission's rules, as the Commission suggests. *See* Notice, ¶¶ 92-95.

It is particularly inappropriate to seek repayment of universal service funds from the service provider when there is evidence that the applicant engaged in waste, fraud or abuse or committed a statutory violation that would prohibit funding. Statutory violations might occur where either the applicant is ineligible to receive discounts, or it is using the otherwise eligible services for non-permissible (e.g., not "educational") purposes. In those instances, only the applicant who engaged in the wrongdoing should be assessed, because only that entity is responsible for knowing whether it is eligible

³ This should only occur in rare instances, where USAC determines that there has been an error shortly after it has released a BEAR check to the service provider, but before the service provider has passed the refund on to the applicant.

under the Act or whether it is using the services properly. Likewise, when there is evidence that the applicant engaged in waste, fraud, or abuse, the Administrator should seek reimbursement against only the entity that is accused of wrongdoing. Indeed, the Commission has previously acknowledged that the Administrator should not follow standard recovery rules, which seek recovery of funds from service providers in the first instance, when there is wrongdoing by the applicant.⁴ The Commission should confirm here that the Administrator should not seek reimbursement from the service provider when it appears that the applicant engaged in waste, fraud, or abuse in which the service provider did not participate. It would be unfair to assess the service provider in such cases, because, if it was unaware of and uninvolved in the improprieties, it is as much the victim of the applicant's wrongdoing as is the Administrator. It acted in good faith in providing the requested discounted services (or obtaining reimbursement from the administrator, and disbursing it to the applicant). In cases where there is evidence of wrongdoing but it is not clear which party is guilty of waste, fraud, or abuse, the Administrator should seek recovery from all parties.

- *Service providers acting as "Good Samaritans" should not be assessed.*

The Commission should create a categorical rule that service providers acting as "Good Samaritans" will not be liable to repay funds they disburse in their Good Samaritan role. A service provider acts as a Good Samaritan when it steps in to submit payment requests to the Administrator and pass those payments to the applicant in

⁴ "We also emphasize that the proposed recovery plan is not intended to cover the rare cases in which the Commission has determined that a school or library has engaged in waste, fraud, or abuse. The Commission will address those situations on a case-by-case basis." *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, 15 FCC Rcd 22975, ¶ 13 (2000).

instances where the service provider that originally provided the services cannot perform these tasks. This may happen when, for example, the original service provider went out of business or filed for bankruptcy after providing services to the applicant. In such instances, the new service provider's only role is to act as a conduit for the funds from USAC to the applicant, and submit the proper paperwork for the funding. If it did not provide the services in question, it should not be subject to a request to repay these funds if it is later determined they were disbursed in error. Commission assurance that the Good Samaritan carrier will not be assessed will help encourage carriers to step into that role and will reduce the potential for waste when the original service provider can no longer participate in the program. The Commission has already agreed not to seek reimbursement from the service provider in one case involving a Good Samaritan.⁵ That decision should be broadened to apply to all similar cases. This is consistent with the recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse, convened by the Administrator's Schools and Libraries Division, which urged that the original service provider and/or the applicant should be responsible for any commitment adjustment issues. *See Recommendations of the Task Force on the Prevention of Waste, Fraud and Abuse at 12 (dated Sept. 22, 2003) available at www.sl.universalservice.org/data/pdf/finalreport.pdf.*

⁵ *See Request for Immediate Relief filed by the State of Tennessee*, 18 FCC Rcd 13581 (2003); *BellSouth Corporation Petition for Clarification of Request for Immediate Relief filed by the State of Tennessee*, 18 FCC Rcd 24688 (2003).

- *No reimbursement should be sought where funds would have been properly disbursed but for procedural or technical violations in the application process.*

Most instances where the Administrator has issued a commitment adjustment letter to telecommunications service providers seeking reimbursement of funds it already disbursed are cases of defects in the application that the Administrator failed to notice at the time. It was only during after-the-fact audit of its approved discounts that the error was uncovered. Even where there exist procedural or technical errors that would have been sufficient to deny the funding request at the outset, once those funds have been disbursed and applicants have used scarcely budgeted resources to pay for services that cannot be refunded, the calculus should be different. As the Notice recognizes, funds that were disbursed in violation of statutory requirements raise different issues from payments that may have violated program rules but otherwise would have been permissible disbursements. Notice, ¶¶ 79-81.⁶ Absent a statutory violation, or allegations of waste, fraud, or abuse, the Commission should direct the Administrator *not* to seek repayment of the funds that would have been properly disbursed but for relatively minor errors in the application process. These would include, but would not be limited to, errors such as late-filed applications, data entry errors, and the failure to check a box on the form.

Particularly when the request for repayment comes years after the initial disbursement, the applicant does not have the ability to correct any past errors or resubmit the application for services. Nor can it adjust the services ordered in past years,

⁶ The Commission has held that the Debt Collection Improvement Act obligates it to develop a remedy where federal payments are made in violation of a federal *statute*. See *Changes to the Board of Directors of the National Exchange Carrier Association, Federal-State Joint Board on Universal Service*, 15 FCC Rcd 7197, ¶¶ 7, 10 (1999).

or readjust past years' budgets, to make up for the loss of E-rate funds that it already spent. Moreover, if the school or library used the E-rate funds to pay for eligible services, it used the money for benefits that Congress and the Commission have determined it is entitled to receive.⁷

The Administrator has sought repayment of funds from service providers based on technical rule violations in situations where the funds clearly were used for eligible services, and there was no sound policy reason to seek such repayment. For example, Verizon is appealing a 2003 USAC decision which seeks repayment because the school purportedly had failed to certify that it had budgeted amounts to pay for the non-discounted portion of the services it had ordered. This is despite the fact that by the time the Administrator sought repayment, the school system had *actually paid* for the non-discounted portion of the services, proving that it had the funds to do so. Instead, because it had not certified three years earlier that it had the needed funds, Verizon received a letter from the Administrator stating it may be required to repay the funds.⁸ Other pending appeals also demonstrate examples in which USAC has denied funding based on technicalities that do not compromise the E-rate program.⁹

⁷ It is no better in this situation to go after the service provider rather than the applicant. As stated above, if the funds have been disbursed to the applicant, it is not fair to seek repayment from the service provider, and the service provider would be unlikely to be able to obtain reimbursement from the applicant. Moreover, many of the situations involve errors made by the applicant over which the service provider had no control.

⁸ See Request for Review and/or Waiver by Verizon Virginia Inc. (filed Nov. 14, 2003).

⁹ For example, one pending appeal claims that USAC reduced its funding commitment by more than \$2 million based on a late-filed Form 486, even though, due to ambiguity in the rules, it is unclear whether form was timely filed. See System Concepts Appeal of Form 486 Notification Letter, at 2 (filed Oct. 17, 2002).

The purpose of the schools and libraries program is to provide discounted telecommunications services and, where funds allow, internal connections, in order that the school or library can utilize state-of-the-art telecommunications and obtain Internet access at affordable rates. Although the applicants should be required to abide by the Administrator's application procedures and Commission rules in seeking funding, if the Administrator fails to detect non-substantive, non-statutory violations at the time and provides the requested support, it should not seek repayment if the error is uncovered years later, and the services have been provided and paid for. Moreover, because the Administrator currently seeks the reimbursement from the service provider, which was unaware of the error, the provider must either take a loss on the service when it repays the amount disbursed in error or earn community ill will by seeking repayment from the school or library. In either case, no public interest is served by allowing the Administrator to seek such reimbursement, and the Commission should instruct the Administrator not to do so.

- *The Commission should set a statute of limitations, and direct the Administrator not to seek reimbursement more than one year after the funds were disbursed, except in cases of statutory violations or waste, fraud, or abuse.* The Commission operates under a one-year statute of limitations for seeking forfeitures against carriers that “willfully or repeatedly fail[] to comply” with the Act or Commission rules. 47 C.F.R. § 1.80. There should not be a longer window for seeking forfeiture of funds previously disbursed in error, particularly when most of the refunds are based on errors, not willful or repeated violations. After one year, it may be difficult to locate the right records, the responsible personnel may be unavailable, or the applicant may have changed service providers. This

could make it hard for the school or library to provide any needed documentation to justify the accuracy of the application. If the assessment is against the service provider, it may find it even more difficult if not impossible to seek reimbursement from the school or library more than one year after the fact than if the error had been caught more quickly. For more serious violations of program rules, such as in cases of waste, fraud, or abuse, it might be appropriate to allow a longer period for seeking recovery of funds.

Hand-in-hand with the adoption of a specific limitations period, the Commission should ask USAC to recommend specific ways in which its resources and processes can be adjusted so that it catches more errors *before* funds are disbursed. For example, rather than relying as heavily on audits, which by their nature are time-consuming and difficult to conduct, the Administrator might instead invest more resources in performing more basic, “spot checks” of some of the application items that most often turn up problems in later audits. Because these abbreviated reviews would be much easier and faster to conduct, the Administrator would be able to review a greater percentage of applications, which would also provide incentives for applicants – who have a greater risk of being caught by a larger net – to comply with the technical requirements of the rules.

III. The Commission Should Not Expand the Definition of Internet Access For the Schools and Libraries Program Simply to Conform with the Rural Health Care Program Rules

In the Rural Health Care proceeding, the Commission recently decided to fund a portion of rural health care providers’ monthly costs for Internet access services. *Rural Health Care Support Mechanisms*, Report and Order, 18 FCC Rcd 24546, ¶ 22 (2003). However, in that proceeding, the Commission specifically declined to adopt the definition of “Internet access” used in the schools and libraries program. *Id.*, ¶ 25. The

Notice asks whether the Commission should amend the definition of Internet access that applies to the E-rate program, “to conform to the definition recently adopted for the rural health care mechanism.” Notice, ¶ 71. Specifically, the Commission asks whether the current definition used for the schools and libraries program – which provides support only for “basic conduit access to the Internet” – should be expanded to include funding for “for features that provide the capability to generate or alter the content of information.” *Id.* It should not. There is no reason to believe expanding the definition for the schools and libraries program would comply with the Act’s requirement that such funding be “economically reasonable,” given the already over-committed \$2.25 billion in funds allocated for the program. Such a new definition also would divert resources from other, more basic services required by other applicants. Moreover, the Commission deliberately decided that the rural health care program and the schools and libraries programs have different Internet access needs, warranting different definitions.

As an initial matter, the Act states that “access to advanced telecommunications and information services” should be made available only if “technically feasible and *economically reasonable*.” 47 U.S.C. § 254(h)(2)(A) (emphasis added). Programs that might be “economically reasonable” for the rural health care program, which the Commission was concerned was operating at well below the authorized program funding level, and that involves a relatively small number of potential applicants, present a far different picture when proposed to be added to a \$2.25 billion program that is already oversubscribed. Because the schools and libraries program demand always far exceeds funding, providing additional funding for “Internet access” would only come at the expense of other, more basic services to other applicants.

In addition, it is unclear from the Notice what services the Commission would include in the new potential definition of “Internet access,” or how much those additional services would cost. For example, would web hosting be covered? Would software content – currently not an eligible service – become eligible if sold as part of a package offered by an Internet service provider? If so, would USAC have to define (and audit) whether the software was “educational,” in order to justify funding? Moreover, as the Commission has already noted, in prior comments on this issue, “parties had widely varying views of what should be viewed as ‘content’” that would be eligible for support under an expanded definition. Notice, ¶ 70. Without any understanding of exactly what services the Commission would deem appropriate, there is not even a sufficient record upon which to determine whether any such expanded definition could meet the “economically reasonable” test.

Importantly, for the rural health care program, the Commission determined that it would provide funding for only 25% of the newly eligible Internet access services. Rural Health Care Report & Order, ¶ 27. This limitation is significant, because it both allows the Commission to control the growth in the size of the rural health care fund due to Internet access funding and provides a strong financial incentive to the applicant not to oversubscribe to services that are not necessary. *Id.* However, the Commission does not suggest that such a 25% cap – and the resulting control on growth of the fund size – would apply to the schools and libraries program. *See* Notice, ¶¶ 70-71. This further undercuts any suggestion that applying an expanded definition of Internet access to the schools and libraries program would meet the Act’s requirement of being “economically reasonable.”

More to the point, the Commission should not change the definition of “Internet access” to “conform” with the rural health care definition, especially if the change is merely to “simplify and streamline program administration,” *Id.*, ¶ 71, because the two programs have very different needs. For example, in the Rural Health Care proceeding, the Commission determined that “the ability to alter and interact with information over the Internet is precisely the feature that could facilitate improved medical care in rural areas.” Rural Health Care Report & Order, ¶ 26. However, there is no evidence that schools and libraries have an equal need for such services. Conversely, the Commission specifically *declined* to provide support to rural health care providers for other Internet access services – notably, the purchase of internal connections – that *are* funded under the E-rate program. *Id.* To truly conform with the rural health care definition, the Commission would have to eliminate currently eligible E-rate services, such as internal connections, which is something the Notice does not suggest. The Commission’s decision to use a different definition for Internet access in the Rural Health Care proceeding was based on the specific needs of that program and should not impact the definition used for E-rate funding.

IV. The Commission Should Not Change The Rules Requiring An Applicant To Select The Most Cost-Effective Service Proposal.

As the Commission points out, the current rules require an applicant to select the most cost-effective offering from among the bids submitted. Notice, ¶ 87. However, they also provide some flexibility in allowing the applicant to consider factors other than price in determining which services best suit its needs. *See* 47 C.F.R. § 54.511(a) (“In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should

be the primary factor considered”). The Notice asks whether it should “codify additional rules to ensure that applicants make informed and reasonable decisions in deciding for which services they will seek discounts.” Notice, ¶ 87. In particular, it asks whether it should adopt a “bright line test for what is a ‘cost effective’ service,” or adopt some type of “benchmark or formula for ‘cost-effective’ funding requests, such as a specified dollar amount per student or per library patron for specified types of service.” *Id.* Such change should be rejected, as it would interject a difficult layer of administrative complexity on the universal service program, and there is no suggestion that it is necessary.

While the Notice suggests that creating a codified, bright line might help applicants, the result is likely to make the application and bidding process much more difficult. First, no matter how simple the bright-line test may appear to be, it likely will require calculations and factors that are hard to determine and/or audit. Thus, while the intent of such a rule might be to add certainty, requiring a formulaic approach to funding simply opens the door to audits and potentially technical challenges by an unsuccessful bidder based on a claim it can provide some different service package that is more cost-effective. This could spawn considerable litigation and increase costs to the applicants and the Administrator.

Moreover, given that different technologies and services offer different capabilities, it may be almost impossible for any meaningful, formulaic calculation to be performed. This would present more, not less, confusion in the application process, as applicants would be trying to perform calculations to determine what services they are allowed to purchase instead of having the flexibility to consider which services are more tailored to meet their needs. In addition, such calculations may require additional

research by the applicant, for example into the number of students that might use the service or all possible ways of meeting the applicant's particular technology needs, which would further complicate a process that many already believe should be further streamlined.

In addition, there is no reason to adopt a stringent, bright-line requirement. As stated above, the rules already require the applicant to choose a cost-effective service. Moreover, this is reinforced by the fact that the applicant will need to pay a portion of the cost of the service (and may pay even more, if the Commission changes the maximum discount from 90% to 80%, as the Notice suggests, see *id.*, ¶¶ 61-62). If particular applicants are abusing the current rules, that should be a case for USAC audit, not for the wholesale development of new requirements that would be burdensome and limiting to applicants.

V. Wide Area Networks Should Remain Priority One Services

Wide Area Networks ("WANs") should continue to be considered priority one telecommunications services when they are (1) provided by eligible telecommunications service providers and (2) where the components for such networks that are located at the school or library can be considered part of an end-to-end telecommunications service or Internet access. Such networks connect two or more locations that are not on a single school campus or within a series of interconnected buildings. *See* the Administrator's discussion of requirements for WANs at <http://www.sl.universalservice.org/reference/wan.asp>. Because such networks connect disparate locations, they should be viewed as any other telecommunications service, *i.e.*, they enable the school or library to communicate among various separate locations.

Unlike a local area network, a WAN does not consist of wiring and equipment to communicate only within a single building or campus, and it should not be considered an internal connection. Therefore, it should properly be reimbursable as a priority one telecommunications service.

As Sprint pointed out in its earlier comments in this proceeding, the Commission should allow reimbursement for WAN services to only those service providers that are offering such services on a common carrier basis, not to entities that are in essence building dedicated networks solely for one or two customers and are not offering such services to the general public. One way to police this requirement is to ensure that the entity that is being reimbursed is itself contributing as a common carrier to the universal service fund. *See* Comments of Sprint Corporation at 5-6 (filed Apr. 5, 2002).

There is no reason for the Commission to enlarge the minimum amortization period for recover of a provider's WAN investment beyond the current three-year period. The service provider is incurring considerable expense in installing the WAN for the school or library, and it should be able to recover the investment quickly. *See* Notice, ¶ 75.

VI. Dark Fiber Should Not Be Reimbursable.

The Commission should not consider dark fiber to be a telecommunications service that is eligible for reimbursement. By definition, unlit fiber carries no voice or data signals and is, therefore, not being used to provide any telecommunications. It is simply glass fiber installed for future use. There is no way for the Commission or the Administrator to know whether or not it is eventually going to be used for eligible services. And the Commission has not found provision of dark fiber to end users to be a

telecommunications service.¹⁰ Therefore, installation of optical fiber should be reimbursable only when it is provided by an eligible telecommunications carrier and is actually being used to transmit eligible telecommunications.¹¹

VII. The Definition of Rural Area Should Track That Which Is Adopted For Rural Health Care.

Unlike the Internet access rules, discussed in section III above, there appears to be no reason to have a different definition of “rural area” for schools and libraries from the one the Commission adopts for rural health care providers in that pending proceeding.¹² Using the same definition would ease administration of the two programs, and there is no special feature of either program that warrants different definitions.

As Verizon pointed out in the Rural Health Care proceeding, the definition that the Commission adopts there, and that it should apply to schools and libraries, should meet four core principles: (1) it should accurately define rural areas that are likely to require universal service support, (2) it should allow all parties to determine easily whether an area qualifies, (3) it should be consistent from year-to-year, and (4) the underlying inputs used for the definition of “rural” should be readily available to the

¹⁰ The one instance where the Commission found dark fiber to be a common carrier service was specifically limited to cross-connects between collocated carriers. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability, Fourth Report and Order*, 16 FCC Rcd 15435, ¶ 75 (2001) (“only in the limited context of cross-connects between collocated carriers must incumbent LECs provide dark fiber service under this Order”).

¹¹ The conversion of dark fiber to a “lit” service requires more than a simple converter. The fiber must be “lit,” monitored, and maintained to be a working telecommunications service that is eligible for funding.

¹² *See Rural Health Care Support Mechanism, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 24546, ¶¶ 63-64 (2003).

public to allow health care providers to determine their eligibility and to understand the factors used by the Commission. *See Rural Health Care Support Mechanism, WC Docket No. 02-60, Comments of Verizon at 5-6 (filed Feb. 23, 2004).*

VIII. Conclusion

Accordingly, the Commission should adopt an order consistent with these comments.

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.
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