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[1] IN SUPPORT OF PETITION FOR RECONSIDERATION BY SPRINT CORPORATION AND BELLSOUTH[2]

The Commission should grant the Sprint/BellSouth Petition, and revise the new requirement that directs USAC to presume that an E-Rate beneficiary that does not pay the non-discounted share of eligible E-Rate services within 90 days will not ever pay, thus allowing USAC to seek repayment of all funds disbursed.[3] Although Verizon and other service providers certainly support incentives for applicants to pay their bills in a timely manner, the 90-day rule was not based on any evidence in the record, and in many instances is far too short a period to warrant such a potentially harsh remedy. Rather than tying such a rule to the date of *service*, the Commission should amend the rule so that the presumption of non-payment applies only if the applicant has failed to pay 90 days after the *bill* for services is due. *See* Section I, *below*. In addition, the Commission should not include certifications relating to competitive bidding on the Form 473, Service Provider Annual Certification Form, as the person who signs that form

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

2 *See Petition for Reconsideration of Sprint Corp. and BellSouth Corp.*, CC Docket No. 02-6 (filed Oct. 13, 2004) ("Sprint/BellSouth Petition").

3 *See Schools and Libraries Universal Service Support Mechanism*, Fifth Report and Order, 19 FCC Rcd 15808, ¶¶ 24, 71 (2004) ("*Fifth Report and Order*").

(related to invoicing) would not generally be knowledgeable about the bidding process. *See* Section II, *below*.

I. THE COMMISSION SHOULD REVISE THE 90-DAY RULETO OFFER AN EXPANDED TIME FRAME FOR PAYMENT BEFORE ADOPTING A PRESUMPTION OF APPLICANT NON-PAYMENT.

Although the E-Rate program provides funding for between 20-90% of eligible services, the Commission's rules require applicants to certify that they will pay for the non-discounted portion of services. *See* 47 C.F.R. § 54.505(b); § 54.504(b)(2)(v). The reason for such a rule is to ensure that applicants have a financial stake in not ordering more services than they reasonably need, and so that there are no incentives to order services that cost higher than market value.[4] To further those goals, the *Fifth Report and Order* provides that, in determining whether or not an applicant will pay for the non-discounted portion of a service, "a reasonable timeframe is 90 days after delivery of service." *Fifth Report and Order*, ¶ 24. In other words, if a customer does not pay within 90 days after completion of service, this "presumptively violates [the] rule that the beneficiary must pay its share" and USAC will be authorized to recover all E-Rate funds disbursed. *Id.* As the Sprint/BellSouth Petition properly notes, there is no record support to justify a 90-day timeframe, which in many cases is far too short to warrant a "presumptive" finding that the applicant will not pay for services rendered. *See* Sprint/BellSouth Petition, at 1-6.

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[4] *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 493 (1997) ("First Universal Service Order"). For example, if a service were worth $80, and the applicant received an 80% discount, the applicant and service provider theoretically could receive 100% funding for the service from the E-Rate program by agreeing on a price of $100, submitting a claim for 80% ($80) to be paid by USAC, and having the service provider waive the other $20 portion of the price.

The implications of the 90-day rule may be particularly unwarranted in the case of non-recurring services and internal connections, which are billed only after the service or product has been provided. For example, Verizon often does not bill for internal connections until the applicant performs a "walk through" with a Verizon representative to verify that the work has been completed. Because this involves the coordination of schedules between the necessary representatives from the applicant and Verizon, it is not unusual for the walk-through appointment to occur more than a week (and even up to a few weeks) after the internal connections have been installed. After the walk-through appointment, it could take an additional 30 days (or more) for Verizon to generate and send out a bill. In Verizon's experience, certain school districts then may take as long as two to three months to review invoices and obtain the requisite approvals necessary to have them paid. In these situations, there is no basis for presuming that, just because the applicant has not paid within 90 days after service was rendered, it does not intend to ever pay its non-discounted share.

In addition, the Commission should not adopt any rules that would limit the ability of service providers and applicants to contract for flexible payment schedules. Although parties often enter contracts for payment within thirty days, that is not always the case. So long as the applicant and service provider have agreed on a reasonable schedule of payment, and there is no evidence that the applicant will not pay the proper share of the bill for E-Rate services, there is no policy reason to require applicants and service providers to adopt a one-size-fits-all payment schedule. Any burdens from late payment ultimately are borne by the service providers, not the E-Rate program, so service providers still will have every incentive to require prompt payment for these services.

For all of these reasons, Verizon recommends that the 90-day rule be amended so the

presumption of non-payment applies only if the applicant fails to pay "within 90 days after the *bill* for services is *due*." In addition, the Commission should clarify that whatever "presumption" of non-payment applies, USAC can and should consider other facts that may make the presumption unwarranted in that particular case. That is, if there's evidence that an applicant *does* intend to pay, even if the 90-day rule has expired, USAC should give the applicant the benefit of the doubt, and allow it to cure any rule violation by paying the bill for the non-discounted portion of E-Rate services *before* withdrawing universal service funding.

II. THE COMMISSION SHOULD NOT REQUIRE NEW CERTIFICATIONS REGARDING BIDDING PRACTICES TO BE IN THE FORM 473 INVOICE CERTIFICATIONS.

In order to "emphasize to potential service providers that any practices that thwart the competitive bidding process will not be tolerated," the *Fifth Report and Order* requires service providers to certify in the Service Provider Annual Certification Form 473 that it is appropriately setting prices and is not improperly using the bidding process to restrict competition.[5] As an initial matter, it should be noted that requiring such certifications is not necessary; service providers already are subject to a variety of state, federal, and local laws that prohibit the type of anti-competitive conduct the certification statements are designed to address.[6] The certification statements are thus superfluous, and add an unnecessary level of paperwork to the already

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[5] *Fifth Report and Order*, ¶ 71. In particular, the service provider must certify that: (1) the prices offered by the service provider were "arrived at independently, without, for the purpose of restricting competition" any agreement or consultation with other potential competitors; (2) the service provider will not disclose prices to other competitors before bid opening or contract award; (3) the service provider will make no attempt "to induce any other concern to submit or not to submit an offer for the purpose of restricting competition." *Id.*

[6] *See, e.g.*, Scott Livingston and Lydia Hoover, *Principles of Maryland Procurement Law*, 29 U. Balt. L. Rev., § I and n.1 (citing other state procurement laws) (1999); *id.*, § III (discussing Maryland requirements, including sealed bidding); Federal Acquisition Regulations, 48 C.F.R. § 1.101 *et seq.*

document-intensive E-rate application process. However, if the Commission nevertheless wishes to require applicants to provide such certification statements, it should at least move such certifications to an appropriate form, separate from the Form 473.

The Form 473 is designed to "confirm that the Invoice Forms submitted by each service provider are in compliance with the FCC's rules governing Universal Service for Schools and Libraries."[7] As such, the person signing the Form 473 must have knowledge of the E-Rate invoices submitted; at Verizon, typically that person has been in the Finance department. However, particularly for larger service providers such as Verizon, the persons most knowledgeable about the invoicing process are not involved in the competitive bidding process. For that reason, it is difficult to identify who would be able to certify to both invoicing *and* bidding functions. Rather than combining both types of certifications on a single document, the Commission should allow service providers separately to certify annually (either in a letter or in a separate "competitive bidding" certification form) that they have met the Commission requirements relating to competitive bidding.

Respectfully submitted,

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[7] *See* directions accompanying Form 473, *available at* http://www.sl.universalservice.org/data/pdf/473i.pdf.

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 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.