

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

In the Matter of)
)
Schools and Libraries Universal Service)
Support Mechanism) CC Docket No. 02-6
)
Comments on the Universal Service)
Administrative Company's Audit Resolution Plan)

REPLY COMMENTS

BellSouth Corporation, on behalf of itself and its wholly owned subsidiaries (“BellSouth”), submits these reply comments to comments filed on January 5, 2005¹ in response to the *Public Notice*² released by the Wireline Competition Bureau on December 7, 2004.

I. INTRODUCTION: THERE MUST BE CLEAR RULES AND THE AUDIT PROCESS MUST BE FAIR AND OPEN

Two important themes emerge from the filed comments. First, all Universal Service Administrative Company (“USAC”) Audit Resolution Procedures, as well as Schools and Libraries Division (“SLD”) and Bureau rules, should be characterized by ready accessibility, clarity and precision. There is a universal call for transparency and simplicity in the applicable USAC rules and procedures.³ Applicants and service providers alike are ill-served by fleeting

¹ E-Rate Central Comments, CC Docket No. 02-6 (Jan. 5, 2005); Comments of the State E-Rate Coordinators Alliance, CC Docket No. 02-6 (Jan. 5, 2005) (“SECA Comments”); Comments of Verizon Regarding the Universal Service Administrative Company (“USAC”) Proposed Audit Plan, CC Docket No. 02-6 (Jan. 5, 2005) (“Verizon Comments”).

² *Wireline Competition Bureau Seeks Comment on the Universal Service Administrative Company's Audit Resolution Plan*, CC Docket No. 02-6, *Public Notice*, DA 04-3851 (rel. Dec. 7, 2004).

³ Verizon Comments at 9-11, SECA Comments at 4-5, E-Rate Central Comments at 1-2.

program guidance that appears, then disappears, on the official SLD website; by use of complicated and overbroad form certifications and letters that are published or implemented without appropriate notice or comment from interested parties; and by policies that are so vague that the SLD itself must seek clarification from the Bureau as to the scope and extent of any mandatory requirements attaching to them. E-rate program funding should not be put at risk by vague program requirements, non-inclusive audit procedures and overbroad sanctions.

Second, the Bureau, the SLD and the USAC should not adopt a default policy of “guilty until proven innocent” with regard to audit resolution.⁴ The facts simply do not support such an approach.⁵ There has been enough practical experience under the program to allow the Bureau and the SLD to start from the premise that the vast majority of program applicants and their large LEC service providers are partners, not adversaries, in the deployment of the latest technologies to enhance the education and public library experience. Further, E-rate program applicants and service providers are striving together in good faith to use the E-rate program as Congress intended in order to bring new and affordable technology into the nation’s schools and libraries. For these reasons, service providers must play a meaningful role in any audit of an E-rate program applicant/customer,⁶ and audit resolution procedures must be fair and equitable for program applicants and service providers alike.⁷

⁴ Verizon Comments at 4.

⁵ SECA Comments at 2 (“Based on our collective experiences of interacting with applicants and other stakeholders on a daily basis, we are firmly of the view that the vast majority of applicants work very hard to comply with the program rules.”).

⁶ Verizon Comments at 7-9.

⁷ *Id.* at 6-7.

II. E-RATE RULES AND AUDIT PROCEDURES SHOULD BE MADE CLEAR AND ACCESSIBLE TO ALL PROGRAM PARTICIPANTS

Every commenter agrees that E-rate rules and audit procedures must be clearly established and easily followed.⁸ Applicants and service providers are entitled to clear rules, and simple forms and procedures that are limited in scope to the extent necessary to fulfill the purposes of the E-rate program.

Once any form of SLD E-rate guidance for applicants and service providers is posted on the SLD website, a record of its posting, including the duration, must be maintained in the permanent records of the SLD, and a visitor to the site must be clearly informed of any superseding rule, policy or guidance and the date that the superseding rule, policy or guidance took effect.⁹

Ultimately, experience demonstrates that the E-rate program is best served by collaboration between SLD administrators, the service provider community and the applicant community that results in clear and practical policies and procedures. For the most part, BellSouth believes that many of the proposed audit resolution procedures incorporate standard and practical safeguards, including the opportunity for the audited party to comment on draft audit proposals, and a requirement that violations can only be found for rules then in effect. The fact that a number of parties sought clarification of these fundamental procedural safeguards, however, demonstrates that there is at least a perception that more precision and clarity is needed in the current program.

⁸ E-Rate Central Comments at 1-2 (advocating a requirement that SLD publicly maintain an archive of training material); SECA Comments at 4-6 (maintaining need for clarification that violations can only be found for rules then actually in effect, that violations cannot be based on policies that are so vague as to require further guidance from the Bureau); Verizon Comments at 9-11 (noting, *inter alia*, that there is no complete list of E-rate rules).

⁹ E-Rate Central Comments at 1-2, Verizon Comments at 10.

For these reasons, BellSouth fully supports Verizon's proposal that the Bureau direct USAC to create a comprehensive list of program rules, together with the dates on which (1) USAC provided notice of the rules, and (2) the date such rules became effective, and post this list on the USAC website.¹⁰ Both requests for archived rules and guidance materials should be granted.¹¹ Not only will these improvements facilitate the audit resolution process, but also they will go a long way toward preventing non-compliance events from ever happening in the first place.

III. ADVERSE BUSINESS CONSEQUENCES OF E-RATE AUDITS SHOULD BE TAILORED TO FIT A CLEARLY PROVEN NON-COMPLIANCE EVENT

Verizon correctly demonstrates two problems with the "non-compliant auditee process" as it relates to the procedures announced in the *Public Notice*:

First, it appears that USAC is in some instances withholding *currently* pending and *future* funding requests while it investigates compliance issues related to *prior* funding years. . . . Second, to the extent that the Non-Compliant Letter is addressed to a service provider, any withholding of funds should not apply to *all* of the service provider's customers, but only those implicated in the potential non-compliance investigation.¹²

In the event that there is sufficient and reasonable belief that the subject of an audit is not in current compliance with program rules (provided those rules are made clear to program participants as described in Section II, above), then, as Verizon must concede, it is reasonable to investigate these potential non-compliance events before the SLD approves then-pending (or any future) funding requests related to that specific application. However, as Verizon correctly notes, "the same rationale does not apply to USAC's apparent practice of withholding (or denying)

¹⁰ Verizon Comments at 9-10.

¹¹ E-Rate Central Comments at 1-2, Verizon Comments at 10.

¹² Verizon Comments at 3 (emphasis in original, footnotes omitted).

pending and future requests while the auditee or service provider responds to inquiries about compliance with *past years'* program rules."¹³

Such over-breadth is unnecessary and could be potentially devastating to program applicants. Verizon shows that the record in this docket establishes that funding freezes and delays have resulted in a complete lack of Internet access for some applicants, and that significant delay and uncertainty are especially devastating for applicants whose budgets depend to a significant extent on E-rate funding.¹⁴ Even in the absence of audits, program applicants increasingly face significant delays in funding decisions, to the extent that funding decisions might not even issue until the last day of the program year. It makes no sense to exacerbate the uncertainty that already exists in connection with program administration by adopting an overbroad approach to audit resolution.

If there are problems with current or future program year funding requests, they can be addressed in audits of those specific requests. To add additional and unwarranted delay to the disbursement of E-rate funds, particularly when there is no evidence of criminal or even intentional wrongdoing, will only deter the technology partnerships between applicants and service providers and result in incalculable losses in terms of innovative educational opportunities for the affected classes of students. Thus, any penalty should conform in scope to the action giving rise to the administrative sanction; withholding all current and future funding requests for potential past violations is by its very nature overbroad.

Similarly, BellSouth agrees with Verizon that audit-related sanctions for non-compliant service providers must be narrowly tailored so as not to punish innocent applicants. As Verizon

¹³ *Id.* at 3-4 (emphasis in original).

¹⁴ *Id.* at 4.

states, any withholding of E-rate support under these circumstances should be limited to funds for the service provider customers at issue in the potential non-compliance situation.¹⁵

BellSouth, like Verizon, serves a wide geographic area. BellSouth employs multiple account teams serving many school districts and libraries throughout the southeastern United States in order to partner for E-rate awards that will bring new and innovative technologies to widely dispersed classrooms and libraries. A non-compliance event disclosed through an audit that relates to a specific applicant in one state, or to a specific service provider account executive serving a particular account on a particular project, should not have the effect of penalizing the hundreds of other partnerships or E-rate awards in progress and unrelated to the specific act giving rise to sanction. There should be no presumption that any audit resulting in a finding of a violation indicates a systemic problem of non-compliance endemic in the applicant or service provider, particularly where, to date, no evidence of any such systemic non-compliance appears to exist.

Both SECA and Verizon correctly urge the Bureau not to change its current policy of not requesting payment of funds while an appeal of a non-final finding of an E-rate program violation is pending.¹⁶ Until a finding of non-violation is final, the risk of disruption to both the applicant and the service provider, not to mention the downstream effects on the affected classes of learners, is too great. In the event that an appeal of a non-binding, non-final determination of an audit violation is upheld in favor of the audited party, the administrative burdens associated with seeking reimbursement of any unnecessary initial repayment far outweigh the operational

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 10; SECA Comments at 7.

and budgetary certainty that is assured and preferred by waiting until all appeals are exhausted before seeking recovery.

Finally, for the reasons stated by Verizon, BellSouth concurs that service providers should be notified of, and allowed to participate in, audits of their E-rate customers. BellSouth often has documents in its possession that may assist in audits, including documentation or records no longer kept by its applicant customers; it may also have billing records establishing records of payment, and certainly has information documenting the nature of the services for which E-rate awards were sought. As a cooperating service provider in an audit of its E-rate customer partner, BellSouth's participation could speed resolution of the investigation, and its involvement would allow BellSouth to prepare for and minimize any adverse business impacts of any non-compliance determination that may arise in connection with the audit.¹⁷

CONCLUSION

The Bureau should revise the proposed audit plan in accordance with these comments, and take additional steps as outlined above to make compliance with the E-rate program easier for all stakeholders.

¹⁷ Verizon Comments at 8-9.

Respectfully submitted,

BELLSOUTH CORPORATION

By: /s/ Theodore R. Kingsley
Theodore R. Kingsley
Richard M. Sbaratta

Its Attorneys

Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375-0001
(404) 335-0720

Date: January 20, 2005

CERTIFICATE OF SERVICE

I do hereby certify that I have this 20th day of January 2005 served the following parties to this action with a copy of the foregoing **REPLY** by electronic filing or by placing a copy of the same in the U. S. Mail addressed to the parties below.

+Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
The Portals, 445 12 Street, S. W.
Room 5-B540
Washington, D. C. 20554

Gary Rawson, Chair
State E-rate Coordinators Alliance
Mississippi Department for ITS
301 N Lamar Street
Suite 508
Jackson, MS 39201

+Best Copy and Printing, Inc.
The Portals, 445 12th Street, S. W.
Room CY-B402
Washington, D. C. 20554

Edward Shakin
Ann H. Rakestraw
Verizon Telephone Companies
1515 North Courthouse Road
Arlington, VA 22201

Winston E. Himsworth
E-Rate Central
2165 Seaford Avenue
Room 217
Seaford, New York 11783

/s/ Juanita H. Lee
Juanita H. Lee

+ **VIA ELECTRONIC FILING**

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